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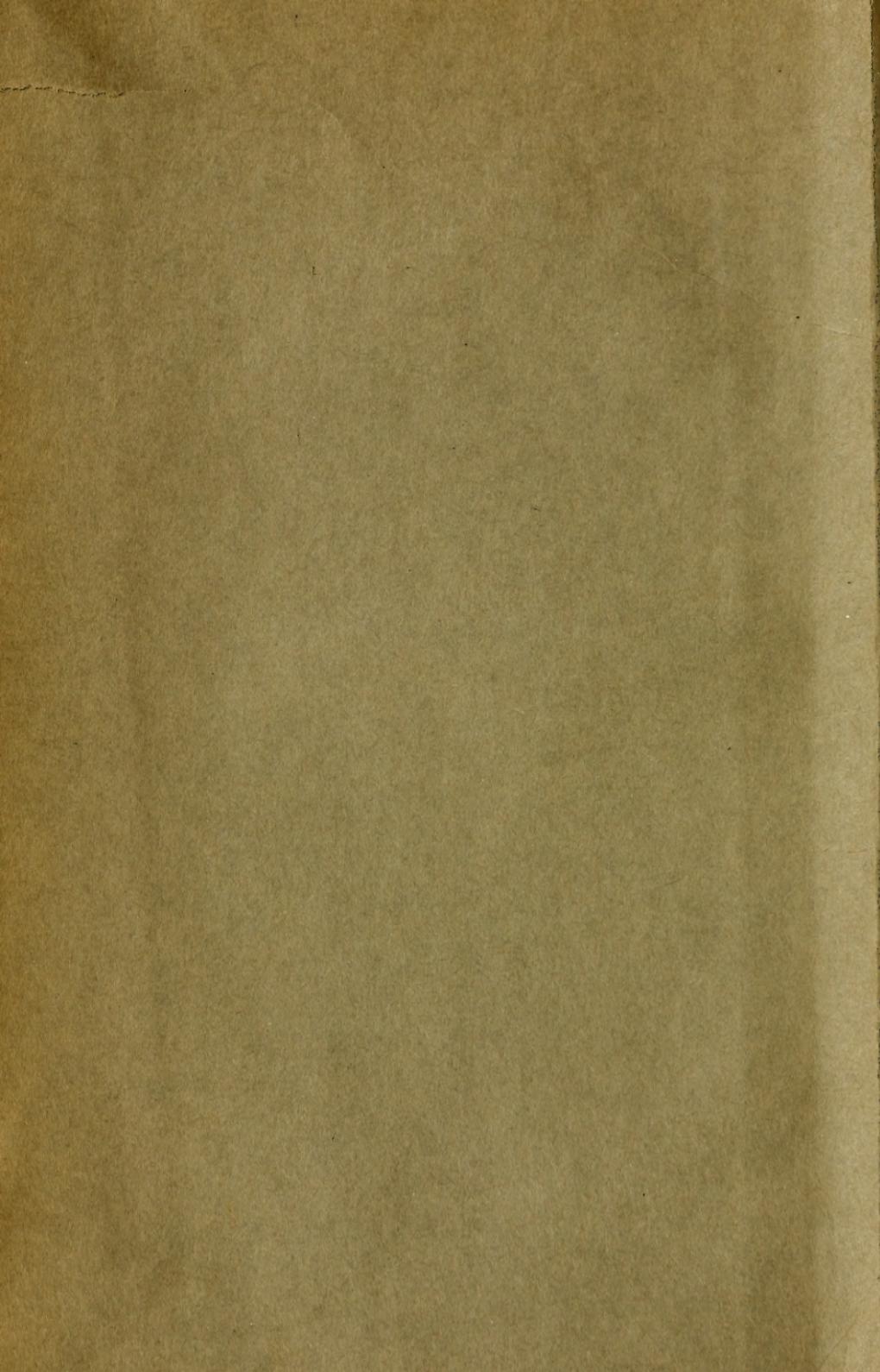
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JOHNS HOPKINS UNIVERSITY STUDIES

IN

HISTORICAL AND POLITICAL SCIENCE

(Edited 1882-1901 by H. B. Adams.)

J. H. HOLLANDER

J. M. VINCENT

Editors

W. W. WILLOUGHBY

VOLUME XX

COLONIAL AND ECONOMIC
HISTORY

BALTIMORE

JOHNS HOPKINS PRESS

1902

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The Lord Baltimore Press
THE FRIEDENWALD COMPANY
BALTIMORE, MD., U. S. A.

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WESTERN MARYLAND IN THE
REVOLUTION

SERIES XX

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J. H. HOLLANDER J. M. VINCENT W. W. WILLOUGHBY
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WESTERN MARYLAND IN THE REVOLUTION

BY

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BALTIMORE
THE JOHNS HOPKINS PRESS
PUBLISHED MONTHLY
JANUARY, 1902

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The Lord Baltimore Press
THE FRIEDENWALD COMPANY
BALTIMORE, MD.

WESTERN MARYLAND IN THE REVOLUTION

The western frontier of Maryland advanced but little beyond the head of the tide water until the sturdy German settlers, coming down through the valleys of the Blue Ridge, settled the fertile valleys of Frederick and Washington counties. With their arrival, about the year 1735, a new and most important era opened in Maryland's history. Previously there had been no doubt concerning her alliance with the South in her economic, social and political life. This new and alien influence tended to join the province closer to Pennsylvania, and, as Western Maryland became more and more populous and as the city of Baltimore grew in commercial importance, largely through the influence of the same German settlers, there came to be a doubt in the minds of geographers whether Maryland should be called a Middle or Southern State. The life on the Western Maryland farms was far different from that on the plantations of the Chesapeake Bay, and the people of the latter had many economic, commercial and sentimental ties to England, of which the Westerners knew nothing. After landing at Philadelphia, the Germans passed down the fertile lands of Lancaster and York counties and settled all along the valleys as far as northern Georgia. So many of them came that in 1748 Western Maryland could be made a county, under the name of Frederick. In this county was contained, down to the Revolution, all Maryland west of Baltimore, Anne Arundel and Prince George's counties.

The county was not entirely inhabited by Germans. Scotch Irish had also gathered there. Scions of some of

the prominent Maryland families had followed Berkeley's star of empire to carve out new fortunes for themselves. Quakers of steady habits were dwelling in the eastern part of the region. But outside of the lower section, what is now Montgomery County, Frederick County in 1770 was predominantly German. The settlers' husbandry was varied and their fields brought forth hemp, flax, wheat, rye, oats and Indian corn. In huge country wagons the surplus crop went to Philadelphia and Baltimore. In addition to agriculture, manufactures sprung up on a small scale. They made¹ "linen goods, tow, thread; they knitted long yarn stockings; they tanned their leather and made horse collars and harness; they prepared honey, firkined butter, dried apples, apple butter," etc., and these products found their way to the port of Baltimore. Governor Eden, in a letter to Lord Dartmouth² said of these German settlers: "They are generally an industrious, laborious people. Many of them have acquired a considerable share of property. Their improvement of a wilderness into well-stocked plantations, the example and beneficent effects of their extraordinary industry have raised in no small degree a spirit of emulation among the other inhabitants. That they are a useful people and merit the public regard is acknowledged by all who are acquainted with them." In the county were four or five settlements which might be called towns. Georgetown, on the Potomac, was an English town, and Skipton, or Old Town, on the edge of the wilderness, was a settlement of the hardy frontiersmen, who inhabited the extreme west. Fredericktown, Elizabethtown or Hagerstown, and Sharpsburg were, however, largely German settlements. Of the first town, Eddis,³ writing to a friend in England just before the outbreak of hostilities, states that it exceeds Annapolis

¹ Scharf's Md., II, 61.

² Jan. 29, 1773, Mass. Hist. Coll., 4th Series, Vol. X, p. 694.

³ Date of letter, Jan. 18, 1771, Letters from America, p. 98 ff.

in size and number of inhabitants, and that it possesses numerous warehouses and stores. "The buildings, though mostly of wood, have a neat and regular appearance. Provisions are cheap, plentiful and excellent. In a word, here are to be found all conveniences and many superfluities." This prosperity he rightly attributes to the Germans, whose "habits of industry, sobriety, frugality and patience were peculiarly fitted for the laborious occupations of felling timber, clearing land and forming the first improvements." Sharpsburg was of small size and importance, but Hagerstown, to which Jonathan Hager vainly endeavored to give the name of his beloved wife, contained "more than 100 comfortable edifices" ⁴ and did credit to the "discernment and foresight" of its founder. The events we are about to narrate proved that one of the most faithful of their sons made no rash speech when he said that these early German settlers "brought laborious habits, virtuous lives, truthful tongues, unflinching courage, an intense longing to do their duty to their families, the community and the State." ⁵

With a strong desire for freedom and with no social connection with Great Britain, they eagerly sprang forward at the call to resist the British commands. Few of them were Tories, and in all Western Maryland we find comparatively few who refused to sign the Association of the Freemen of Maryland and enroll themselves in the militia companies; unless they were Quakers, Mennonites or Dunkers, and so had religious scruples.

The very children were patriots, ⁶ and a nine-year-old son of Capt. William Keyser begs "that God may prosper you and your united Bretheren, in your laudable undertaking

⁴ Letters from America, Eddis, p. 133. Hager wished it called Elizabethtown.

⁵ Address of Lewis H. Steiner, Centennial Celebration in Frederick Co., p. 35.

⁶ William Keyser to his father. Letter dated Hagerstown, Oct. 12, 1776. Scharf, W. Md., p. 1035.

and in the end crown you with the laurels of a complete victory over the Enemies of the inestimable Rights, Liberties, and Privileges of distressed America and hand them down inviolate to the latest posterity. My Dear Father, my greatest Grief is that I am incapable of military Service, that I might enjoy the company of so loving a father and serve my country in so glorious a cause, but, tho' absent from you, yet my constant prayer is for your Safety in the Hour of danger, your complete victory over the Enemies of the United States of America and your Safe Restoration to the government of your family."

In the struggle between Governor Eden and the popular party over the fee question, Frederick was heartily with the opponents of the proclamation, and we find an address from the freemen of the county to Charles Carroll of Carrollton,⁷ thanking him for his "spirited, manly and able opposition to that illegal, arbitrary and Unconstitutional measure" of the Provincial Government.

They were no less active in passing resolutions of sympathy with Boston and of non-intercourse with Great Britain and the West Indies, until the act blocking up Boston harbor should be repealed, and "the right of taxation given up on permanent principles" and not for expediency.⁸

The county was growing so populous that it was becoming unwieldy and was preparing itself for a division into three parts. The lower part met first⁹ at Hungerford's Tavern, on June 11, 1774, adopted resolutions and appointed a committee of correspondence of 10 members. The middle district, gathering at the court-house in Fredericktown, on June 20, under the chairmanship of John Hanson, followed with resolutions of stringent non-intercourse and with the appointment of a committee of corre-

⁷ Signed by the county's four delegates. Scharf's Md., II, 134.

⁸ Scharf's Md., II, p. 151.

⁹ Henry Griffith, chairman.

spondence of 15 members.¹⁰ The upper part of Frederick County waited until July 2, when 800 of its principal inhabitants assembled at Hagerstown,¹¹ made John Stull moderator, chose a committee of correspondence of 11 members and adopted resolutions, not only agreeing with what the other parts of the county had done, but also approving of the plan of a Continental Congress and promising to "adhere to any measure that may be adopted by them for the preservation of our liberties." Believing that the "surest means for continuing a people free and happy is the disusing all luxuries and depending only on their own fields and flocks for the comfortable necessities of life," they resolve to kill no sheep, to begin to manufacture their own clothing, and not to drink tea till the duty thereon be repealed. They next hang and burn Lord North in effigy and open a subscription for the poor in Boston.

A number of the "mercantile gentlemen" solemnly declared they would send off what tea they had and would purchase no more. Among these was a "certain John Parks." He, poor fellow, seems not to have kept to this agreement, and so, on November 26, was forced to "go with his hat off and lighted torches in his hands and set fire to the tea" which was "consumed to ashes amongst the acclamations of a numerous body of people." The committee furthermore declared, that "friends of liberty" ought to have "no further intercourse with Parks" and add, with delicious naivete, to the account of the matter which they send to the *Maryland Gazette*:¹² "N. B. The populace thought the measures adopted by the committee were inadequate to the transgression and satisfied themselves by breaking his door and windows."

The way of the Tory was indeed hard. Robert Peter, a

¹⁰ Scharf's Md., II, 154.

¹¹ Scharf's Md., II, 155.

¹² Dec. 22, 1774, Ridgely's *Annals of Annapolis*, p. 164.

merchant of Georgetown, was one of those to whom tea was consigned as part of the cargo of the *Mary and Jane*,¹³ which arrived in St. Mary's river in August, 1774. On hearing of this, the Committee of Correspondence met, summoned him and other consignees before them and, after hearing their statements, unanimously resolved, "that the importation of any commodity from Great Britain, liable to the payment of a duty imposed by an Act of Parliament, is in a high degree dangerous to our liberties, as it implies a full assent to the claim asserted by the British Parliament of a right to impose taxes for the purpose of raising a revenue in America." Therefore the "detestable plant" must be "sent back in the same ship." Of the meetings of these early committees of correspondence we have no manuscript record extant.

The organization of a central committee of correspondence for the whole county took place on Nov. 18, 1774, when a meeting of the qualified voters was held at the court-house. Men were then selected to attend the Provincial Convention, to carry into execution the association agreed upon by the Continental Congress and to act as a committee of correspondence.¹⁴ This last committee was soon succeeded by an enormous Committee of Observation, chosen at the court-house on January 22, 1775. This body numbered one hundred and fifty-four members, "with full powers to prevent any infraction" of the Continental Association and "to carry the resolves of the American Congress and of the Provincial Convention into execution."¹⁵ Any seventy-five of the committee were to be a quorum to act for the county and "any five in each of the larger districts" could "act in any matter that concerns such Division only."

Western Maryland, though unsurpassed in her patriotism and devotion to the common cause, was not anxious to

¹³ Scharf, W. Md., p. 127.

¹⁴ Twenty-eight in number.

¹⁵ Scharf, W. Md., I, 128.

break from Great Britain. In 1774, after the first Continental Congress, the magistrates and the grand jury of Frederick County adopted addresses to the Provincial representatives in that body. These papers offer sincere acknowledgments to the delegates in the "Grand Continental Congress,"¹⁶ and express the warmest esteem and gratitude for the regard manifested by that body for the "interests, the rights and liberties of your country." But the magistrates also praise the measures taken, because "the whole of the proceedings of that important assembly are so replete with loyalty to the king, with tenderness to the interest of our fellow-subjects in Great Britain, and, above all, with reverential regard to the right and liberties of America, that they cannot fail to endear you to every American and your liberty to your latest posterity." The "loyalty to the king," which was still associated with "the rights and liberties of America," was soon to be rudely dissevered from it, and Thomas Price, who signed the address, was to command a company of riflemen in the intrenchments around Boston before another year should pass.¹⁷

That was still in the future. Thomas Cresap, John Stull, William Beatty, William Luckett, Edward Burgess, and Upton Sheredine had as yet no difficulty in agreeing to the praise of the Continental Congress, for its "councils tempered with such filial loyalty to the Sovereign, such fraternal delicacy for the suffering of our friends in Great Britain, and, at the same time, with such unshaken zeal for the preservation of the inestimable privileges derived from our admirable Constitution." The men of Frederick were neither wavering nor craven. They believed that "the re-

¹⁶ IV, Force's Archives, 1, 992, 993.

¹⁷ As late as November, 1776, the minutes of the County Court Proceedings state that they were held in the "fifth year of the dominion of the Hon. Henry Harford, Esq., absolute lord and proprietary of the Province," and suits in the name of the Lord Proprietary were brought against persons accused of crime.

sults of the Congress cannot fail to give weight and influence to the cause and must moderate and relax the minds of our most poignant enemies."

The "most poignant enemy" was King George, and when the men of Frederick discovered that fact, all "filial loyalty" was lost and they girded themselves for the fray.

It will not be our purpose in this paper to discuss the achievements of Frederick men outside of the county, but the names of Thomas Johnson, first Governor of Maryland; John Hanson, President of the Continental Congress, and Richard Potts, a member of that body, may well be remembered.

The Convention of December 1, 1774, appointed \$10,000 to be raised for the purchase of arms and ammunition and apportioned \$1333 of that amount on Frederick County. At the time of the choice of this large committee, in January, 1775, men were selected in each hundred of the county to promote the subscriptions to this fund. These men were directed to "apply, personally or by deputy, to every freeman in their respective districts and to solicit a generous contribution." The results of this solicitation and the names of those who should refuse were to be reported to the committee of Correspondence at Fredericktown on March 23.

At the same meeting, delegates to the next Provincial Convention at Annapolis were chosen and preparations were made for the choice of a new Committee of Observation. It was felt that the present unwieldy body was not satisfactory and that "a more proper representation of the people" should be had. To accomplish this, the collectors in each hundred were "desired to give notice to voters of the time and place of a meeting to elect members to a Committee of Observation." The number of members to be chosen from each hundred should bear some relation to its population and returns were to be made when the results of the subscription were handed in. The new committee should then meet and the present one be dis-

solved. Thus far the people had largely acted on their own initiative; but, during the summer, the Provincial Convention assumed more power and the committee chosen in the autumn was elected, according to the regulations laid down by the Provincial body.

For some reason, no new committee was appointed at the time named,¹⁸ but the old one was continued until the fall, when three committees were chosen for the three districts into which the county had been divided. It was beginning to be uncomfortable to be a Tory, and the notorious Rev. Bennet Allen, who had complained a little previously that his living was three years in arrears, was summoned before the committee in June, 1775, and made to produce for inspection one of his sermons.¹⁹

During the autumn of 1774 and the succeeding winter collections were taken up throughout Frederick County for the families in Boston "whose means of sustenance have been so long and so cruelly cut off by an Act of British Parliament." The people of Western Maryland, though far distant from Massachusetts, considered "the people of Boston as standing in the gap, where tyranny and oppression are ready to enter, to the destruction of the liberties of all America," and the Frederick men felt it to be "the duty of every individual in America to contribute as largely as his circumstances will admit to their support." With wide liberality, therefore, they sent over £200 currency to Massachusetts and received thanks therefor from Samuel Adams, chairman of the Boston Committee.²⁰

When Thomas Johnson, of Frederick County, had nominated George Washington to be commander-in-chief of the Continental forces and he had hastened northward at the noise of Bunker Hill, the Maryland delegates in Congress wrote to John Hanson, chairman of the Committee of

¹⁸ June 21, 1775, IV, Force's Archives, II, 1044.

¹⁹ It was pronounced "not exceptionable."

²⁰ Scharf, W. Md., I, 127.

Observation in Frederick County, that two companies of expert riflemen were required to join the army at Boston and be "employed as light infantry." The committee met²¹ on June 21 and resolved to raise the companies with the following officers: Captains—Michael Cresap and Thomas Price; Lieutenants—Thomas Warren, Joseph Cresap, Jr., Richard Davis, Jr., Otho Holland Williams, and John Ross Key. These companies, the first of the famous Maryland line, "armed with tomahawks and rifles and dressed in hunting shirts and moccasins," were so hardy that, setting out from Fredericktown on July 18, they arrived at Boston on the 9th of August, having made the journey of five hundred and fifty miles over rough roads in twenty-two days and without the loss of a man.

Being the first soldiers from the South to reach New England, they excited much attention.²² These famous marksmen did good service before Boston. One of their leaders, Cresap, marched with death impending over him and lived but three months from the time they left Frederick; the other, Price, survived to make an honorable record in subsequent campaigns. The companies were incorporated in the rifle regiment commanded by Stephenson, of Virginia. After Stephenson's death, Moses Rawlings, of Old Town, became colonel, and the deeds of Rawlings' regiment need not be repeated here.²³ Mention

²¹ Scharf, W. Md., I, 130. The volume of Maryland Archives containing Muster Rolls of Maryland troops, edited by Bernard C. Steiner, has lists of three companies in the Flying Camp from the Lower District on p. 73, five from the Middle District on pp. 73-74, and three from the Upper District on p. 73. Frederick recruits in 1778 are named on pp. 294, 314, 320, 324, and those in 1780 on pp. 334 and 344. Montgomery County recruits in 1780 are on p. 341, and Washington County ones on p. 346. Invalid pensioners from Western Md. are on pp. 630 and 632. Select Militia lists are on p. 652, deserters in 1778 on p. 327, and Capt. John Kerschner's company guarding prisoners at Fort Frederick is on p. 328.

²² Vide Maryland Papers published by the Society of '76.

²³ Scharf, W. Md., I, 131.

must be made, however, of the major of the regiment, Otho Holland Williams. The convention made him colonel of the Frederick County battalion in the Flying Camp, but he felt the lesser position was more suitable for him,²⁴ and participated in the gallant exploits of Rawlings' regiment. Captured with his command and held prisoner for some months, he was next appointed colonel of the Sixth Regiment of the Maryland Line and led that gallant body on many a Southern battlefield.²⁵

This is not the place to follow out the career of the soldiers from Western Maryland. They could always be depended on from the time they were formed into a battalion in August,²⁶ 1775. The names of some of their commanders come down to us through the years. Lodowick Weltner, Upton Sheredine, George Stricker, Mordecai Beall, Peter Mantz,²⁷ Thomas Richardson, Charles Greensbury Griffith, George Poe, Thomas Frazer, Richard Baltzell, James Ogle, John Murdock,²⁸ William Keiser, Richard Crabb, Lemuel Barrett, Daniel Cresap, Valentine Creager, Zadock Magruder, Greenbury Gaither, Joseph Chapelaine, Peter Hanson, and many others. German²⁹ companies,³⁰ surplus companies, a battalion for the Flying³¹ Camp, riflemen for the mariners, companies for the Maryland line, militia companies to march to the aid of Washington, whatever of soldiery was needed for the common cause was gladly furnished by Western Maryland. Of the

²⁴ Md. Arch. Council of Safety, II, 104. Vide Scharf, Hist. of Md., II, 264.

²⁵ Osmond Tiffany's Otho Holland Williams, Md. Hist. Soc. Pub.

²⁶ Md. Arch. Jour. Council of Safety, I, 18.

²⁷ Centennial of Montgomery Co., p. 32, gives names of officers in Md. line from that county.

²⁸ Nine companies, nearly one-quarter of the Flying Camp, were from Frederick Co.

²⁹ Council of Safety, I, 253.

³⁰ Vide Council of Safety, II, 399.

³¹ Council of Safety, II, 92 and 330. Read the quaint letter of Peter Mantz, Council of Safety, II, 185.

county militia, the chief officer was Thomas Johnson, the first governor of the new State, who with noble self-denial declined the command of the militia sent to Washington's relief. He wrote to the Council of Safety:³² "In a matter of so much consequence, I shall frankly give my opinion at every hazard, that it is not best to let our militia go out under any provincial Brigadier. . . . None of the rest of us have seen service and I fear we are not so competent, nor will the men have the same confidence in either of us, as in one who has had experience." The Council answer that they leave it to his discretion to march or not³³ unless Congress appoints another commander, which they hope, in order that Johnson might take his "seat in that honorable Body, where you may be of great service at present." Of such material were the officers and they commanded a body of men like Sergeant Lawrence Everheart.³⁴

The resolutions of Congress, calling out the militia, were received in Frederick on the evening of December 19, 1776. The committee of the Middle District at once resolved, in language of noble firmness, "that the militia ought to equip themselves in the best manner they are able and march with all possible speed to Philadelphia and be subject to orders of the commander-in-chief there, but prudence directs that some be left behind," therefore, the field officers shall select from each battalion, those whose circumstances may render it most inconvenient to leave home, to be kept on duty as a guard and to enroll themselves under officers to be appointed by the Committee. Though zealous for the common cause, they were not negligent of the care of matters at home, and to avoid danger, directed that "every person capable of bearing

³² Dec. 19, 1776, Council of Safety, II, 541, 556. In his letters of Dec. 22. and 24. Johnson seems to regret his declination, and roused by the urgency of the situation to long for the command.

³³ Montgomery Co. seems to have been quite slow to respond to the call. Council of Safety, II, 558.

³⁴ Vide Md. Papers, published by the Society of '76, p. 42.

arms and hitherto exempt from marching, for age or other infirmities, now enroll to keep guard during absence of the militia. The Committee think that from 1000 to 12,000 men can march from Frederick County, if money be sent by Congress to equip them. The Committee will do what it can, but will not have guns for more than one-fifth of the men."³⁵ Nothing could indicate more clearly the lack of supplies. With great speed, notice was sent to the three battalions of Washington and the two battalions of Montgomery County. On the night of the 19th, a message was sent for supplies to Congress, then sitting in Baltimore. On the 21st,³⁶ Congress voted \$18,000 to equip the militia of Western Maryland. On the 22d,³⁷ the money was received by the Frederick Committee. No time had been lost, but there was still need of shoes,³⁸ stockings, tents or blankets. Johnson writes that the last named are especially needed and if sent, "may save a good many poor fellows." Many commissions for the officers had failed to arrive at Frederick. Johnson complained a second time of this, in a letter written on Christmas³⁹ eve. He had not yet received sufficient supplies, which "were never more needed, than by those who now offer to turn out." But the lack of necessaries did not deter the Frederick men from doing their duty, even in the depth of winter. Johnson thought it would be enough, if half the militia went to Washington's assistance, and that, if all should march, it would "leave the country rather naked"; but the courageous Committee wished to have all the militia march.

At the opening of the Revolution, Frederick County was growing so unwieldy that a speedy division was inevitable. The first step toward this was taken by the Convention

³⁵ V, Force Archives, III, 1288.

³⁶ V, Force Archives, III, 1603.

³⁷ V, Force, III, 1330. Congress highly approved of the zeal and activity of the committee.

³⁸ V, Force Archives, III, 1307.

³⁹ V, Force, III, 1395; Md. Arch., Com. of Safety, II, 540.

on August 14, 1775, in its decree that, on the second Tuesday of September, when the freemen of each county should meet and elect the Committees of Observation, Frederick's large committee of 53 men should be chosen not at one place as in other counties, but in three places.⁴⁰ The county was now divided into three districts: the Lower one,⁴¹ corresponding with Montgomery County, should choose a delegate to Convention, a Committee of Correspondence of two members, and a Committee of Observation of seventeen. In the Middle and Upper Districts two delegates were to be chosen and an Observation Committee of eighteen. The Upper District,⁴² probably from its remoteness, had no Committee of Correspondence, the Middle District had one of three members.⁴³ All these committees served for a year.

This subdivision of the county was not satisfactory to the frontier inhabitants, and, in response to their memorial, on January 17, 1776, the Convention voted to create a district, including all the county west of Licking river, and directed the freemen in this district to meet at Skipton⁴⁴ to choose "one discreet and sensible freeman" as a delegate and a committee of observation of 15 members. This was done and, for several months, Frederick County was divided into four parts, the Skipton District roughly corresponding to the present Allegany and Garrett counties.⁴⁵

For some reason, however, probably because of the scattered character of its inhabitants, the Skipton District did not remain separate from the Upper District, and on August 31, 1776, the Convention gave leave to bring in an ordinance to divide Frederick into *three counties*.⁴⁶ The

⁴⁰ Md. Archives, Coun. of Safety, I, 27-29.

⁴¹ Poll at Hungerford's.

⁴² Poll at Elizabethtown (Hagerstown).

⁴³ Poll at Fredericktown.

⁴⁴ Old Town, Allegany Co.

⁴⁵ Proceedings of Convention, pp. 46, 114.

⁴⁶ Proceedings of Convention, p. 234.

ordinance was passed⁴⁷ on September 6, and decreed that after October 1, the Upper District should become Washington and the Lower one Montgomery County.⁴⁸ Of the record of the Committee of Observation of the Old Town or Skipton District we know nothing save that Capt. Lemuel Barrett was its chairman.

The Lower District⁴⁹ (Montgomery County) has left us but little more information as to its acts. The minute book is apparently lost, but the one action of this committee known to us is more famous than any act of the other three committees. The occasion was dramatic. Independence hung in the balance. In May, 1776, the Provincial Convention had voted that it was not expedient to break away from the mother country. Should this vote stand as the expression of the opinion of the people of Maryland? Samuel Chase and Charles Carroll of Carrollton said nay, and traveled from county to county to arouse the people. In this they succeeded, and in one part of the province after another, resolutions were adopted favoring action with the other colonies towards declaring independence. We shall see that the Upper District took action; the Middle District, singularly enough, seems to have held her peace; while the Lower District, through its Committee of Observation, made a bold proclamation of its views on June 17. Catching with joy at this sign of popular support, Chase wrote to John Adams on the 21st: "Read the papers and be assured Frederick speaks the sense of many counties."⁵⁰ So did she, and seven days later the province resolved to be independent. These were the resolutions which were so unanimously passed by the Com-

⁴⁷ Proceedings, pp. 242, 271, 344. On Oct. 11, part of Prince George's county petitioned to be annexed to Montgomery and that the county seat be Georgetown.

⁴⁸ The Middle District included part of the present Carroll Co.

⁴⁹ IV, Force Archives, III, 694, gives the list of members of the committee chosen on Sept. 12, 1775.

⁵⁰ J. Adams' Works, IX, 412.

mittee:⁵¹ "Our sole and primary intention in appointing Delegates to meet in convention was to regulate the mode of opposition, necessary to be made by us internally against the arbitrary machinations of the British ministry, and to appoint delegates to meet our sister Colonies in Congress, to recommend such measures as, by a sense of the majority of the Colonies, would best secure the natural and inherent rights of the people." The resolutions were no less in favor of union. "What may be recommended by a majority of the Congress, equally delegated by the people of the United Colonies, we will, at the hazard of our lives and fortunes, support and maintain and that every resolution of Convention, tending to separate this Province from a majority of the Colonies without the consent of the people is destructive to our interest and safety and big with public ruin."

Complaint was made that the proceedings of the Convention had been secret, and the Lower District states that "a knowledge of the conduct of the representative is the constituent's only principal and permanent security." Therefore they "claim the right of being fully informed therein, unless in the secret operations of war," and "shall ever hold the Representative amenable to that body, from which he derives his authority."

The desire for a new and permanent constitution and the distrust of the Convention caused the Committee to urge the necessity of the separation of the powers of government and to state "that, in all counties where the power to make laws and the power to enforce such laws is vested in one man or in one body of men, a tyranny is established." In fine, the Committee's theory of the government is "that all just and legal government was instituted for the ease and convenience of the people and that the people have the indubitable right to reform or abolish

⁵¹ Jonathan Wilson, Chm.; Simon Nichols, Clk. IV, Force Archives, VI, 933.

a government, which may appear to them insufficient for the exigency of their affairs."

When men spoke thus, the final rupture from England was at hand. The Committee of Observation for the Upper District was also chosen, on September 12, 1775, and organized two days later, electing John Stull, President, and Samuel Hughes, Secretary.⁵² It served until November 25, 1776, when a new committee was chosen. The second committee was composed of much the same men as the first and continued to exist until March 3, 1777, when the State Government being fully organized, the Committee "adjourned forever, Amen," as the record has it. The record book, now in the possession of the Maryland Historical Society, has been twice printed in part, once for patriotic purposes in 1862, edited by the Hon. J. V. L. Findlay, and again in Scharf's History of Western Maryland.⁵³ This Committee was more fiercely radical than the Middle District Committee, and when the Convention of the Province passed resolutions laudatory of Gov. Robert Eden, the Committee was much disturbed. On June 25, 1776, a week later than the Lower District, it unanimously resolved that those proceedings of the convention were unsatisfactory to it and that they be laid before "the good people of this district, when they meet in a battalion on Friday and Saturday next." A subcommittee was appointed to draft resolutions to be submitted to the Committee and the militia.⁵⁴ The resolutions were adopted. They recite as grievances that "the legislative, executive and judicial powers in this Province are at present exercised by the same body of men"; that "the administration of justice is confused and uncertain, places of the most important trust held by persons disaffected to the common

⁵² Scharf, Hist. of Md., II, 185.

⁵³ Vol. I, p. 133.

⁵⁴ Resolution brought in on June 28, amended, submitted to the people, adopted by them on the 28th and 29th, and ordered to be printed.

cause of America, the transactions of the Convention carried on in a secret manner," and that while the recommendations of Continental Congress were "unregarded" and "propositions of the utmost importance were determined without consulting the people."⁵⁵ They complain of the "adulatory address presented to Governor Eden, supplicating his interposition with a people that has hitherto treated our just petitions with the greatest contempt," and state that all the above-mentioned matters have "very much alarmed the good people of this district and filled their minds with deep concern for the honor and welfare of this Province in particular and the United Colonies in general." Because of these facts they declare the "present mode of government . . . incompetent to the exigencies" of the province and "dangerous to our liberties." Being willing to "support the union of the colonies with our lives and fortunes," they wish the present convention to be dissolved and a new one immediately elected to declare independence.

The slow measures of the majority in the State still distressed the Committee in December, when they petitioned the Council of Safety to call the General Assembly immediately, "that a speedy establishment of the new government may take place for the support and good maintenance of peace and good order." Among the early acts of the committee⁵⁶ were resolutions authorizing Henry Shryock and James Chaplain to enroll companies of minute men and appointing a committee to license suits.⁵⁷ The record book shows that this committee performed its duty well and, doubtless, all the business of the courts passed under their vigilant eyes. The Association of the Freemen of Maryland was speedily given into the hands of a tried man in each hundred, who should carry it to all freemen resident in his district.

⁵⁵ *I. e.*, respecting independence and the seizure of Gov. Eden.

⁵⁶ Sept. 18, 1775.

⁵⁷ Oct., 1775.

As this document bound its signers to defend the patriotic cause by arms, as well as by their influence, the Quakers, Dunkers and Mennonites declined to sign it, or to muster in the militia. The Committee felt "that it is highly reasonable that every person who enjoys the benefit of their religion and protection of the laws of this free country ought to contribute, either in money or military service, towards the defence of these invaluable rights." They were of the opinion that "those who are prevented from mustering because of religious scruples would render an equivalent by paying two shillings and sixpence per week."⁵⁸ The enrollment and signing went on slowly, and, on March 4, 1776, the captains of each hundred were ordered to take an association paper to the people of their hundreds and to make record of those who refuse to sign, with their reasons for so doing. This was done, and, on April 29, the "several returns of non-enrollers and non-associators" were considered. These men were then summoned to appear on May 7 and show cause why they do not enroll and associate and "why they should not be fined and compelled to deliver up their fire arms except pistols." Already men had found it perilous to oppose the Association;⁵⁹ one⁶⁰ had been put under a guard of six men until he could be sent to the Council of Safety for trial, or would "sign the association, enroll into some company, ask pardon of this committee and give good security for his good behaviour for the future." Two other troublesome Tories,⁶¹ who spoke "unbecoming words against the association" had been brought before the Committee, "acknowledged their fault and signed."

On the appointed day, some were excused, but the most

⁵⁸ Vide Proceedings of Convention, Dec., 1775.

⁵⁹ Nov. 11, 1775, John Swan appealed to the committee that John Shryock had aspersed his character by saying he was an enemy to America. Shryock was called in, and not substantiating his charge, Swan was honorably acquitted.

⁶⁰ March 4, 1776.

⁶¹ March 18, 1776.

either did not appear or could not give satisfactory reasons. They were therefore ordered to pay a fine within a month and to deliver up their fire-arms, except pistols, to the persons appointed to receive them.⁶² The Mennonites and German Baptists petitioned that they might give produce instead of cash for their fines and the Committee recommended this to the Convention.

From time to time we catch glimpses of contumacious persons,⁶³ who were accused "of expressing sentiments inimical to the liberties of America and advising Captain Keller's company to lay down their arms," or of "being an enemy to the liberty of America."⁶⁴ When the charges were proved, the penalty would consist of a severe reprimand by the chairman, a public acknowledgment of their faults, the signature of a recantation, and payment of all expenses "accruing upon their apprehension and guard during the time of their confinement." The last was an almost indispensable preliminary to a discharge.⁶⁵ The Committee did not intend that the public purse should be drawn upon for the maintenance of Tories under guard.

⁶² Persons were appointed and full instructions given them, May 9, 1776.

⁶³ June 28, 1776.

⁶⁴ July 7, 1776.

⁶⁵ The especial case referred to above was that of Captain Jacob Kerr and Henry Worrel (Aug. 17, 1776). Their recantation stated that they "acknowledge to all friends of American liberty, that we have used expressions inimical to the liberties of America; that we do hereby publicly acknowledge our faults, expressing our sincere sorrow for our evil and malicious conduct and do promise, engage, and pledge our honors to conduct ourselves in a regular manner for the future; never acting, saying or doing, or, to our knowledge, suffering or permitting any thing to be said or done prejudicial or inimical to American liberty, but will, forthwith, to the utmost of our power, oppose every enemy thereof." See also the case of David Meek, Dec. 24, 1776; Christian Eversole, Dec. 18, 1776; Michael Peter, Jan. 16, 1777, Feb. 1, 1777. John Funday, charged with "speaking sentiments inimical to the United States," did so when "excessively drunk." Before and since he had spoken as a friend to the common cause. He is discharged on paying costs.

One case received somewhat different punishment.⁶⁶ The culprit failed to sign the association or deliver up his firearms until November 24, 1776. For this he was fined, and inasmuch as he was charged "with altering a public newspaper, by making the number of the American army, in an attack upon their right wing, appear to lose 5000 men instead of 500, he was ordered to give bond, in the penalty of £1000, to appear to answer that charge, or be sent under safe guard to the Tory Gaol in Frederick, to continue there until the meeting of the General Assembly."⁶⁷

The Upper District had no jail of its own until that section was made a separate county. On December 22, 1776, the Committee resolved that the stone stable on Captain Hager's lot should be immediately fitted up in a good and substantial manner for the reception of the Tories. The first sheriff of the county had not yet been commissioned, but there was "no place of security in this County for confining persons disaffected to this State and the Tory Gaol in Frederick town is at present much crowded." Therefore the Committee took action at once, and a month later, when a man was brought before them charged with having lodged and secreted his son, a deserter from Captain Farnes' company, the prisoner could be ordered in safe "custody to the Tory Gaol of this County,"⁶⁸ until he shall produce that son. Two days before this action, the Committee had made a general resolve in this matter,⁶⁹ which was evidently causing trouble. "All those, who have put such of their sons, as have enrolled with any captain of the militia, out of the way or suffered them to conceal themselves from their officers, shall call them home as soon as possible and deliver them to some of their officers, or to

⁶⁶ Capt. Samuel Finley. Dec. 18, 1776, he was sent to Frederick.

⁶⁷ He should pay for support there five shillings per day to the officer of the guard and three and nine pence to each private.

⁶⁸ Jan. 21, 1777. Vide Jan. 23.

⁶⁹ Jan. 19, 1777.

this Committee, otherwise to suffer the consequences of such neglect.”⁷⁰

At least one father came before the Committee and made it appear that “he had used his utmost endeavors to apprehend his son,”⁷¹ a deserter, “but could not possibly perform the same.” He was made to give bond of £1000 to appear before the Committee, when called upon, to use “all possible means to apprehend” his son, and to deliver him if found. Other Tories received due punishment for “having damned the Congress, General Washington, and the Committee and wished success to King George and the Royal Family,”⁷² or for “drinking the King’s health and expressing sentiments against the good of the State.”

There were two brothers,⁷³ who were always in hot water, and when they acknowledged that they had spoken and acted in a manner inimical to the cause,⁷⁴ they were ordered to be kept under guard, until the militia should march and then to be taken to camp. The brothers pleaded that their stock must inevitably perish for want of attention, if both of them were to be thus forcibly enlisted, and the warm-hearted Committee permitted one of them to remain. Forceable enlistment, however, is not a good way to make soldiers, and we are not surprised to find that the second brother deserted from the militia and was brought before the Committee before the month was out.⁷⁵

The Dunkers and Mennonites were obliged to pay their fines in December, and £206, 10s were collected from this source. An opportunity was, however, given to non-combatants to avoid paying fines. The young men of these

⁷⁰ For instances of exemption from this resolve, see proceedings for Jan. 20, 1777.

⁷¹ Feb. 8, 1777.

⁷² Feb. 22, 1777.

⁷³ Dec. 27, 30, 1776; Jan. 2, 1777.

⁷⁴ The Gainsbergers, Dec. 30, 1776; Jan. 2, 4 and 23, 1777. Vide Jan. 6, 1777; also Jan. 7, 9. The usual fine for non-enrolling was £10. See Jan. 11 and 17, 1777; Feb. 8, 1777.

⁷⁵ Peter Gainsberger. He was to be kept in close confinement in the Tory Gaol until the return of the militia. Vide Feb. 4, 1777.

peaceful sects were "requested to march with the militia, in order to give their assistance in intrenching and helping the sick, and all such as will turn out voluntarily agreeable to the above request shall have their fines remitted."⁷⁸

During the winter of 1776 and 1777, Tories seem to have been much more plentiful than before and the necessity of punishing them and providing for the army in the field caused the Committee to hold almost daily meetings. Men were brought before them "charged with drinking the King's health and success to Lord and General Howe and the British army,"⁷⁹ and with saying that "the King would have the country before the middle of June next," and that "if he should be put in confinement at Elizabeth-town, he valued it not, for Lord Howe would soon release him." We must remember that, at the time this was done, Washington was just gathering his forces together for his crossing of the Delaware, and the country was passing through the times that tried men's souls. This will account for the boldness of the Tories and for the activity of the Committee.⁸⁰ One man was put in custody and kept there till he should give security that he would "neither say nor do anything inimical to the United States." The next day he volunteered in the Continental service and was released from prison.

Another man published Lord Howe's declaration and other reports inimical to the United States.⁸¹ He was put under safe guard till he produce the declaration and give bond for good behavior. Two more Tories publicly⁸² said that they were determined not to march. "Go to the Tory Gaol," say the Committee, "until a proper guard can be

⁷⁸ Dec. 22, 24, 1776.

⁷⁹ Jan. 13; Jan. 14; Jan. 20, 1777.

⁸⁰ By vote of Jan. 3, 1777, the Tories in custody were each allowed one pound and an half of bread per day. Bread and water were thought good enough for them.

⁸¹ Jan. 15, 1777.

⁸² Jan. 17, 1777. Vide David Hillen, Jan. 14, 1777. The latter had his apprentice enlist and was excused (Jan. 15). An instance of a proxy which failed was that of Ignatius Sims, who gave in

procured to march you to your respective companies." There was no laxity in the measures of the Committee of Washington County. Neither was there undue sternness, and when deserters from Captain Evan Baker's company were brought before the Committee on February 6, 1777, and agreed to march to their companies at camp, they were allowed to do so, provided they give security to appear when called for.⁸¹

The raising and equipment of the militia occupied much of the Committee's attention. Minutest details received great care, and the officers were held to rigid accountability for what they received.⁸² Nominations for officers of the companies and the battalions which they raised were made to the Council of Safety and to the Continental Congress. Poor and sick soldiers of the Flying Camp were provided for by the Committee,⁸³ and quarters for recruits and soldiers were furnished. In one instance,⁸⁴ the Committee offered to bury a poor soldier in a decent manner, at its expense, but the generosity of the citizens of Hagerstown prevented the necessity of this. When the winter campaign of 1776 and 1777 came on, with the pressing need of the Continental Army and the threatened insurrection on the Eastern Shore, the Committee ordered all militia to march, even those who were members of the Flying Camp.

Hagerstown was a busy place at this time. On December 30, 1776, the Committee sent all the militia of the county to Washington's assistance, to remain in service until March 15, unless sooner discharged. It was one of the miserable short enlistments which so distressed Wash-

the name of John McKee. The latter came before committee on Jan. 27, 1777, and said he turned out on Battalion Day voluntarily without agreement with Sims. Ordered that McKee march for himself and not for Sims.

⁸¹ Vide Feb. 8, 1777. Payment of Capt. Andrew Linck's expenses pursuing deserters.

⁸² E. g., case of Capt. Henry Yost, Feb. 5, 1776.

⁸³ Jan. 1, 1777.

⁸⁴ Dec. 24, 1776; Jan. 1, 1777.

ington's heart; but it showed the patriotic mind of Washington County. The measure had been anticipated for some days and the Committee had resolved⁸⁵ that, "on the marching of the militia," those who were "well affected" and not capable of marching "shall be formed into companies with proper officers for the protection and relief of such families as shall be left without assistance, officers of the companies so formed shall divide the settlement into certain circuits, and ride around such circuits as shall be assigned them once a fortnight, make particular inquiry into the distresses of the inhabitants and order them such relief as they shall think necessary. Should their companies not be sufficient for giving such relief, they are required to apply to the Tunkers and Mennonists residing nearest to give their assistance."

Some of the recruits behaved "in a very riotous and disorderly manner" in Hagerstown, and the Committee had to tell all recruiting officers to have their men conduct themselves properly or expect a representation to Congress of their behavior. Servants, or negroes, were also ordered not to go without written permission from their masters any distance from home, while the militia were away,⁸⁶ on penalty of receiving "thirty lashes on the bare back well laid on."⁸⁷ Every measure was taken to prevent the spread of terrifying rumors.

If private property was needed for public use, it must be given. When a man received a message, requesting him to send in his small farm-wagon, immediately, and neglected to do so,⁸⁸ a guard was sent at once to fetch the wagon and three horses, or oxen, if the horses could not be found, and the owner with them, to show cause why he had treated the authority of the Committee with so much

⁸⁵ Dec. 22, 1776. Vide Jan. 19, 1777. All able-bodied men must march or provide a substitute.

⁸⁶ There was to be no inoculation for smallpox in the absence of the militia, Jan. 2, 1777.

⁸⁷ Jan. 11, 14, 17, 1777.

⁸⁸ Joseph Rentch, Jan. 6, 1777.

contempt. Other requisitions were on residents of the county for teams to draw cannon for Col. John Stull's battalion,⁸⁹ or for axes⁹⁰ and blankets for Col. Davies and Major Swearingen's troops, or for horses to enable Capt. Evan Baker⁹¹ to capture members of his company "who have absconded disagreeable to orders," or⁹² for blankets for Capt. Keller's company. All was to be done decently and in order. No horses were to be pressed "without authority of the Committee," nor was any guard to be entitled to pay unless they went out with written orders from the Committee and made return in writing thereto.⁹³ Three men complained that soldiers forcibly entered their houses and took blankets, which they could not possibly spare.⁹⁴ The Committee at once declared such proceeding "without order and tyrannical," and ordered the captain of the company to which the soldiers belonged to return the blankets. There should be no unnecessary hardship created.

Men who were late in marching with their companies⁹⁵ were ordered to give bond for £500, that they would march with the next company leaving Hagerstown, or were kept in close confinement in the Tory Gaol and then delivered to the custody of the captain of the first company going to the front. Robert and Henry Foard and Hugh Gilliland enrolled with Denton Jacques.⁹⁶ As he made no preparation to march, they went to the Committee and were told that they might enroll the company, have a rendezvous appointed, choose officers and make return of all delinquents. Clearly Jacques was unfit for his position. Let the more zealous take it.

Long after the other companies had gone,⁹⁷ Capt. Abraham Baker acknowledged that he and most of his company

⁸⁹ Jan. 10, 1777.

⁹⁰ Only such to be taken as can be spared and payment to be made therefor at appraised value, Jan. 20, 1777.

⁹¹ Jan. 22, 1777.

⁹² Jan. 21, 1777.

⁹³ Jan. 25, 1777.

⁹⁴ Jan. 28, 1777. Vide case of Moses Reiley, Feb. 26, 1777.

⁹⁵ Jan. 15, 1777.

⁹⁶ Jan. 30, 1777.

⁹⁷ Feb. 17 and 26, 1777.

had deserted, and with remarkable lenity, the Committee merely required him to give bond to appear when required, to use his utmost endeavors to bring back the other deserters, and to march with his company to re-enforce General Washington.

Many of the Committee were captains of the companies which left for the field, and so their places had to be filled. The remaining members elected men to fill the vacancies ⁹⁸ and the work went on. New levies were made by the State to aid Smallwood in his task of subduing the Eastern Shore Tories. The Washington County Committee had just sent their best men to aid Washington. But "from a sincere affection for the common cause of liberty, ever willing to risk their lives and fortunes in defence thereof," they unanimously resolved ⁹⁹ to "give every assistance and encouragement in their power to the speedy completing of every company under the said General's command."

The Committee had also to see that proper provision was made for the people of the county. On June 18, 1776, a resolution was passed that no person should sell salt for more than four shillings and six pence above the cost of purchase, and that each seller should produce a certificate under oath of the prime cost, if required. This rule was enforced,¹⁰⁰ and to it a more stringent one was added, that, if any family had more than they needed, the rest might be seized and sold for the benefit of the community. In the winter of 1777, heavy penalties were laid on any miller who should grind wheat for distilling, or any distiller

⁹⁸ Jan. 25, 1777, Isaac Cooper admitted that "he had disputed the authority of the Convention and the Committee, in adding any one member to the said Committee," in the room of any who had resigned. "He acknowledged his fault, promised a more friendly conduct for the future," paid the expense of being summoned and was discharged.

⁹⁹ Jan. 21, 1777.

¹⁰⁰ June 25, 1776; Jan. 16, 1777. Hides of cattle slaughtered for the militia are not to be sold out of the county.

who should distil it, and these regulations were carefully enforced.¹⁰¹

Of this active committee, which sometimes adjourned in the evening to meet at 7 a. m., we have nothing but good to record from the time when they sent to Annapolis fifty-one blankets,¹⁰² within five days of the time requisition was made for them, to the time they broke up a gang of counterfeiters¹⁰³ of Virginia money, arrested some, prevented the rest of the "banditti" from rescuing the prisoners, and sent letters post haste to the committees of other counties, that the remaining members of the gang might be captured. A vigilant, sturdy, kind-hearted, zealous body of men,¹⁰⁴ they had a "sincere affection for the common cause of liberty."

The Committee of Observation for the Middle District¹⁰⁵ was also elected on September 12, 1775, and consisted of 17 men. Two days later, it organized by electing John Hanson, Jr. as chairman, and Archibald Boyd as clerk. We have the minute book of this committee; but not of its successor,¹⁰⁶ elected in the fall of 1776. This was a less radical body than the Committee of the Upper District, but not less vigorous. Like its fellow to the west, it appointed committees on licensing suits, and on correspondence, and named men to raise minute companies,¹⁰⁷

¹⁰¹ Feb. 5, 8, 1777; March 1.

¹⁰² April 8, 13, 1776.

¹⁰³ Feb. 1, 3, 4, 8, 23, 1777.

¹⁰⁴ Committee of Sept. 12, 1775: *John Stull, Charles Swearingen, Andrew Rench, Jonathan Hager, John Sellars, Col. Cresap, James Smith, John Rench, Ezekiel Cox, Samuel Hughes, William Baird, Joseph Smith, William Yates, Conrad Hogmire, Christian Orendorf, George Zwingley, Joseph Chaplain, Col. James Beale.* Committee of Nov. 25, 1776: those italicised above and Peter Beall, Lodowick Young, David Schnebley, Christian Lantz, Joseph Sprigg, David Hughes, Dr. Hart, Michael Fackler, John Kerschner, Nicholas Smith.

¹⁰⁵ Scharf, Hist. of Md., II, 185.

¹⁰⁶ Its successor was not elected at the close of the year, and on Sept. 10, 1776, the late committee met, induced by the resolves of Congress and the necessity of the case.

¹⁰⁷ March 5, 1776. Many have not enrolled through ignorance. Give them another chance till April 11. Vide April 12, 1776.

and to hand about the articles of association in the different districts. As in the Upper District, the Tories, who reflected upon and upbraided in the most indecent manner those who enrolled,¹⁰⁸ "were forced to apologize." Those who spread false rumors,¹⁰⁹ "scandalous," and tending to injure the character of citizens and "create fears and jealousies in the people," were reprimanded. Those who sold salt at a price above that fixed by the Committee were summoned before it and ordered to refund the surplus.¹¹⁰ Men who were charged with endeavoring to sow discord among the "well affected people"¹¹¹ or with advising people to lay down their arms,¹¹² or with absence from muster,¹¹³ met with punishment, as they were guilty of offences of "high and dangerous nature" which "tended to disunite the inhabitants in their present opposition." There seem to have been fewer Tories in the Middle than in the Upper District, though here we find one who grossly insulted the Committee by a letter accusing them of being oppressors.¹¹⁴ Another talked very disrespectfully of the Americans, ridiculing them and their warlike preparations, and asserted that "fifty British soldiers would drive out all the inhabitants of Frederick town."¹¹⁵ Some, who were "suspected of unfriendliness," were compelled to give bond with approved security, or to go to gaol. Here, as in the Upper District, the costs are always borne by the Tories.¹¹⁶

¹⁰⁸ Oct. 2, 1775.

¹⁰⁹ Andrew Grim and Jacob Houser, said Messrs. Booth, Carey and Edelen, tried to blow up the powder magazines. Oct. 2, 16, 1775.

¹¹⁰ Hoffman, Oct. 13, 1775, said his wife sold the salt in his absence and without his knowledge. Vide Dec. 12, 1775; June 18, 1776; July 16, 1776; July 2, 1776. ¹¹¹ Jan. 6, Feb. 19, March 4, 1776.

¹¹² Vide March 4, 5, April 1, 12, 1776.

¹¹³ March 5, April 12, 22, 1776.

¹¹⁴ Nathaniel Patterson, whose accomplices were John McCallister and John Kleinhoff. April 29, May 1, 9, 1776.

¹¹⁵ June 6, 1776.

¹¹⁶ E. g., Dr. John Stevenson, John Stevenson, Jr., Capt. Hugh Scott, James Smith (iron-master), Joshua Testill Morgan, Charles

Frederick, as the most convenient inland town for that purpose, early became a place where prisoners were sent for safe keeping. Connolly and his companions were seemingly the first consigned to the care of the Frederick Committee,¹¹⁷ and on the very day when the news of their capture reached the Convention,¹¹⁸ the Committee resolved to build a strong log gaol in Frederick town, at least thirty feet long and twenty in breadth, of two stories, "the upper story being divided into three rooms with a stove in each room."¹¹⁹

At the door of the gaol, a small house should be built for the guard. The Convention proposed to build the prison on private property. This did not suit the plans of the Frederick Committee, who suggested that the "free school lot" be used as a site for this building, which might be of use to the public, "after our unhappy disputes are at an end."¹²⁰

The Convention did not agree to this proposition, but erected the gaol on Second street, a few rods east of the Farmers and Mechanics Bank.¹²¹ The building was completed by the beginning of June and found occupants awaiting it. On May 19, 13 Tory prisoners from North Carolina came and a constant guard of an officer and of

Connett, Joseph Clarke, July 2, 1776. Jacob Coventry, July 4, 6, 24, 1776. Joshua Testill, July 8, 16. George French relieved of fines for not enrolling by Convention, May 25, 1776. Proceedings of Conventions, p. 160. Jacob Geiger, Sept. 10, 1776. Thomas Tannerton suspected by Lower District Committee to be Moses Kirkland advertised for in Pa., but freed, when Dr. Houblie testified he thought he was a different man, July 23, 24, 1776.

¹¹⁷ Dec. 8, 1775.

¹¹⁸ Proceedings, p. 40.

¹¹⁹ Rev. John Scott, of Somerset Co., was sent to Frederick as a Tory prisoner, Aug. 28, 1776. Proceedings of Conventions, p. 230. Vide Md. Arch., Coun. of Safety, II, 118, 328.

¹²⁰ Dec. 26, 27, 1775.

¹²¹ After the war it was converted into a stable and part of it stood until 1846. The iron bolts fastening the logs together were said to have been made by Frank Mantz, a Tory blacksmith. Scharf, W. Md., I, 138.

men was set over them.¹²² These were part of a body of prisoners sent for safekeeping northwards to Pennsylvania and Maryland. They were retained in Frederick at least until the end of the year, with the exception of six, who succeeded in escaping in September. [REDACTED]

A second band of prisoners¹²³ was received on July 26, 1776, when 15 British officers taken at St. John's came with a letter from the Board of War at Philadelphia, stating that they might be admitted to parole, if they would give it, and, if not, they should be closely confined. Only three signed the parole then, but the other twelve soon became weary of confinement and followed on August 3. As they were allowed the "attendance of their servants and of the women and children belonging to them," their lot was not extremely hard.

When the officers came, the Committee suggested to the Convention that as many of the Tory prisoners had offered security for their good behavior, they might be given wider liberty. The Tory Gaol¹²⁴ is a "dreadful place, but the best we have, to be confined in and so crowded at present (being 27) that we fear it may be dangerous to their health." On August 28, the Convention allowed the prisoners in the Tory Gaol to be taken to the common gaol and walk in the yard. When the resolve of Convention¹²⁵ came to Frederick the Tory prisoners were removed to the common gaol. When cold weather came on, the Committee again recommended that the Tories be per-

¹²² The same day the Committee wrote to the Convention to send money to pay the guard. The regulations provided that the rations for the Tories should not be inferior to those given the guard. June 6, 1776; vide July 2; Md. Arch., Coun. of Safety, I, 403, 405, 408, 445, 473, 480; II, 245, 295, 502.

¹²³ July 26, Aug. 3, 6, 13, 1776. These officers were sent to New Brunswick, N. J., for exchange in November. Md. Arch., Coun. of Safety, II, 456, 486, 502.

¹²⁴ V, Force Archives, I, 569; Md. Archives, Coun. of Safety, II, 117; Proceedings of Convention, p. 230, 232, 251, 257.

¹²⁵ Sept. 3, Oct. 14, 1776.

mitted to give bond for good behavior and that those who were dangerous be transferred to the Tory Gaol as a place of superior strength and preferable for winter. Though the Committee was thus merciful, it was not careless, and on three occasions¹²⁶ expressed disapproval of too great intimacy of non-associators with the prisoners of war. This might prove dangerous to the State and was forbidden. It might easily lead to an escape, like that of September 23, 1776, when seven Tories broke gaol at Frederick and escaped.¹²⁷

The Upper and Lower Districts were discontented with the conservatism of the Convention and Council of Safety. It was otherwise in the Middle District. This Committee favored the policy of the Convention, that the "civil power" be supported in "the due execution of the laws, as far as consistent with the present plan of opposition." For the "maintenance of order and good government," the Committee recommended the people "to pay strict regard to the authority of civil magistrate in the just execution of law." They declare that the "duty and allegiance, enjoined by the oath necessary to be taken to constitute the magistrates, conformably to the laws of this province, are not inconsistent with our present plan of opposition to ministerial despotism."¹²⁸ There was no more patriotic place than Frederick, but the people there would not be the first to rush into a revolution.

It is true that the Committee desired the publication of the proceedings of Convention,¹²⁹ but this was only that the people might be informed of what their representatives did. Just after the Declaration of Independence, which

¹²⁶ Sept. 2 [vide Council of Safety (Feb. 12, 1777), III, 132]; Sept. 3; Oct. 24; Sept. 12, 1776. Philip Thomas wrote to Tilghman that many deserters were concealed in the Middle District. V, Force Archives, II, 298.

¹²⁷ V, Force Archives, II, 457. They were advertised for. Six of these were from North Carolina.

¹²⁸ Oct. 17, 1775.

¹²⁹ March 19, 1776.

was published in Frederick during August,¹³⁰ a man came before the Committee¹³¹ to obtain damages for injury done to his peach orchard. The unanimous answer was that he should apply to the civil magistrate, "which will doubtless take order therein and that this Committee, on every occasion, will support the civil power in the due execution of law."

Congress received equally steady support. When requested to have the preparations for the Flying Camp pushed, the Committee unanimously replied that it would, "and every militia captain and other member of this district ought to exert himself for the immediate equipment" of these Continental troops "with every necessary." In their zeal, they voted to pay the way to New York of several soldiers of the Third Virginia Regiment who had been left sick when the regiment passed through the town.

In the great expansion of our country to the westward, we are apt to forget that Western Maryland was the frontier in 1775. The patriots of that time and place, however, were not forgetful of that fact, and in July,¹³² John Hanson, Jr., wrote to Peyton Randolph, President of the Continental Congress: "There is too much reason to believe that an expedition will be set on foot by the British and Indians in Canada against the western frontiers of this State, Virginia and Pennsylvania. Agents and allies of the King and Parliament, of Gen. Gage and Lord Dunmore, it is believed in this place, are now operating with

¹³⁰ Aug. 21, 23, 1776.

¹³¹ It cared for some sick soldiers of the Continental Army and received payment from Congress therefor. V, Force Archives, II, 298; III, 1571.

¹³² July 16, 1776. On Sept. 10, Philip Thomas was told to inform Convention that several deserters from Col. Smallwood's battalion are in this and the Upper District, and that sick soldiers were left in Frederick by the Virginia regiment. Same day voted to expedite company of volunteers raised in this district. Three companies of the Flying Camp were raised in the Lower District, five in the Middle District and three in the Upper District. Muster Rolls of Md. Troops, pp. 73-74.

the Delaware and Shawnee Indians in Ohio and bands in Kentucky and Canada, with a view to destroy our frontier towns and desolate our homes and firesides. We are determined to keep a vigilant eye on all such agents and emissaries, but it would be highly prudent to take early measures to supply the arsenal and barracks at Fredericktown with arms and ammunition, to enable the male population to defend all the inhabitants, in case the emergency should arise, in which it will become our solemn duty to act.”¹⁸³ Hanson’s surmises were true, but the plans were even more extensive than he imagined. Dunmore, driven from the main part of Virginia and sheltered by the British fleet at Norfolk, had planned a joint expedition with Dr. John Connolly, which was intended to cut the Colonial union in half, along the line of the Potomac. Connolly was a native of Lancaster County, Pennsylvania, and had been bred to the practice of physic, but his ambition to be a soldier led him to serve as a volunteer to Martinique and against the Western Indians in the French and Indian War. In a narrative of his experience, written some years after the close of the Revolution,¹⁸⁴ he states that, after the end of the former war, he explored the newly acquired territory, “visited the various tribes of native Americans, studied their different manners and customs and undertook the most toilsome marches with them through the extensive wilds of Canada and depended upon the precarious chance for my subsistence for months successively.” This training fitted him for a “partisan officer.” Settling at Pittsburgh, which was then claimed by Virginia as a part of West Augusta County, he became commander of militia there and served as major of colonial troops in the Indian War, which was decided by the battle of Point Pleasant in 1774.

Holding royalist sentiments, he tells us he prevented

¹⁸³ Scharf, W. Md., I, 136.

¹⁸⁴ Published in the Penna. Hist. Mag., Vol. XII, 310, 407; XIII, 61, 153, 281.

the choice of a Committee of Observation in West Augusta County and engaged "a formidable body of friends, at the risk of life and fortune, in support of the constitutional authority." According to his narrative, he also made secret loyalist treaties with the Indian tribes, while inducing the Virginians to believe that he was in favor of the Whig measures. He next planned to consult Dunmore in Norfolk about his future moves. Though somewhat detained by local patriots, he succeeded in his purpose¹³⁵ and a plan was concerted to have Connolly raise a body of troops in Canada and Western Virginia and an auxiliary band of Indians. These troops were to make a junction at Alexandria with Dunmore's troops, coming from the coast. During this time, the attention of the colonial army was to be occupied to the northward by the forces under General Howe.¹³⁶ General Gage was still commanding at Boston, and to him Connolly was sent by Dunmore, to gain the endorsement and authority of the British commander. The approval gained, Connolly left Boston on September 14 or 15 and rejoined Dunmore in the following month. The secrecy of the scheme was soon destroyed through the communication of the contents of a private letter written by Connolly to a friend near Pittsburgh and through information given the Virginia leaders by Connolly's servant, who escaped from the ship on the return voyage from Boston.¹³⁷ Ignorant of this fact, Connolly determined to start for Detroit, by the shortest way, through the Province of Maryland. His instructions and the commission as lieutenant-colonel given him by Dunmore on November 5, were "concealed in the sticks of his servant's mail pillion artfully contrived for that purpose." On November 13, with his servant and Dr. John Smith and Allan Cameron, he left Dunmore. The second of these three, a Scotchman, had resided some time in

¹³⁵ Arrived in Norfolk, July 25, 1775.

¹³⁶ The proposals of Connolly are found in Scharf's *W. Md.*, I, 136.

¹³⁷ *Md. Arch. Coun. of Safety*, I, 93.

Charles County, Md., and being a Tory, had left that patriotic neighborhood for West Florida. Connolly induced him to turn back, with the promise of a surgeon's commission, and describes him as a man of "quick penetration, firm loyalty, and intimate acquaintance with the lower parts of Maryland." Cameron was also a Scotchman, had left his country on account of a duel, and had become a deputy Indian agent in South Carolina. Having suffered much abuse there for his unshaken loyalty and having gained some notoriety for a plan to incite the Creek and Cherokee Indians to fall on the colonists,¹³⁸ he was easily induced to join Connolly by the promise of a commission of lieutenant, and possibly of captain, and was valuable to his leader, through his acquaintance with the Indians.

They set out in a flat-bottomed schooner,¹³⁹ intending to proceed up the Potomac river to a point near Dr. Smith's house, on Port Tobacco Creek. Driven by a storm into St. Mary's river, they disembarked, and went forward on horseback. On the very border of the frontier, about five miles beyond Hagerstown, they stopped at a public house for the night of the 19th of November. The landlord knew Connolly, but supposed he was returning to his home in Pittsburgh. During the evening, however, Connolly tells us that a young man from Pittsburgh came to the tavern and then proceeded to Hagerstown. There he went to a "beerhouse" and "mixed with the officers of the militia men." In the conversation some one asked who the strangers were who had passed through the town that afternoon. The Pittsburgh man answered that one of them was Major Connolly of Pittsburgh. Two days before, word of Connolly's plans had come to the colonel of militia¹⁴⁰ there, and rejoicing at this opportunity, a party set out at once, broke into the room where the Tories were, about two o'clock in the morning, and

¹³⁸ Md. Arch. Coun. of Safety, I, 93.

¹³⁹ Scharf's W. Md., p. 137.

¹⁴⁰ Through the revealing of the private letter, says Connolly.

made them prisoners. Taken to Hagerstown, they were kept in separate houses and "suffered that kind of disturbance and abuse which might be expected from undisciplined soldiers and a clamorous rabble at such a crisis." When day came, the prisoners were brought before the Committee of Observation, who pronounced Connolly a "dangerous enemy to the colonies" from "certain papers produced to this committee and acknowledged to have been written by him"; while they found Smith and Cameron "guilty of many equivocations" and suspicious from being in Connolly's company. All three were to be sent to the Council of Safety for further trial.¹⁴¹ Thus the danger was averted and the vigilance of the Western Marylanders had prevented the success of the Tory machinations.

The prisoners were taken to Frederick on the next day and were at once met by a colonel of militia, lately returned from Boston, who knew of Connolly's northern trip. This ended all hopes for release and vigilant examination of their baggage was ordered. Nothing was found on the first search, but, when Samuel Chase arrived in Frederick to preside at the prisoner's examination, a fresh search was directed by him. Dr. Smith said "they examined everything so strictly as to take our saddles to pieces and take out the stuffing and even rip open the soles of our boots."¹⁴² The papers in the pillion sticks escaped detection and were destroyed by the servant; but, in Connolly's portfolio, a rough draft of his propositions was found. The Committee of Observation put the prisoners under separate guards as soon as they were received and ordered that no person speak to them, save in the presence of one

¹⁴¹ Scharf, W. Md., I, 133. Connolly's account differs from this and is very much more favorable to himself. He represents that they were only sent to Frederick and by a small majority. The record says the action was unanimous.

¹⁴² Scharf, W. Md., I, 137. Middle Dist. of Fredk. Co. Com. of Obs. Nov. 21, 22, 23.

of the Committee or by their permission. When the papers were found, copies of them were sent to the Convention of Virginia and Maryland and to Congress.¹⁴³ The Tories were kept in the house of the colonel of minute men under a constant guard. In addition to previous restrictions, they were forbidden the use of pen and ink, save in the presence of a member of the Committee,¹⁴⁴ and anything written by them was directed to be examined by one or more of the committee. Connolly, who becomes querulous at times in telling of the hardships of his captivity, admits that the prisoners had no reason to be dissatisfied with the lodging and diet they had in Frederick, but he complains bitterly of the "clamorous gabbling of this raw militia," as "eternal and noisy beyond conception." The guards¹⁴⁵ were ignorant and stupidly turbulent and gave nights "of entertainment to themselves and visitors and of tantalizing perturbation to me, whose heart was incessantly panting after other scenes and different opinions."

A negro girl who waited on the prisoners became their friend and brought them ink-horn and paper, which she left "between the bed and sacking bottom, unnoticed by the guard." With these, Connolly wrote letters to the garrisons in the west. It was decided that Dr. Smith should make an attempt to escape and take the letters to their destination. The prisoners had noticed "that, towards daylight, our guard, frequently, exhausted by their own noise and folly, were inclined to a momentary quiet and, as no centry was regularly relieved, but all were on duty at the same time," they concluded that an escape was possible.

This was accomplished in the nick of time. On Decem-

¹⁴³ Received by Convention on Dec. 8, 1775. Proceedings, p. 40.

¹⁴⁴ Com. of Observation, Nov. 29, Dec. 26. The Committee asks Congress for reimbursement for expenses incurred in guarding prisoners. Dec. 27, instructions are given to the guard.

¹⁴⁵ Changed every 24 hours.

ber 29, a letter from John Hancock,¹⁴⁶ president of Congress, was received, ordering the prisoners to be removed to Philadelphia. The Committee directed Dr. Adam Fisher¹⁴⁷ and ten men to escort them on the morrow. That very night, the prisoners unscrewed the lock and, while the guards were nodding, Smith slipt down stairs unobserved. Scarcely had they time to screw the lock on again when the guard entered, but seeing some of the prisoners in bed, concluded all were there, cried "all safe" and re-tired. When morning came Smith's escape was discovered and the others were loaded with "opprobrious epithets." Smith was recaptured by the Committee for the Upper District¹⁴⁸ and was brought to Philadelphia.¹⁴⁹ There he made a second unsuccessful attempt to escape and, after being removed to Baltimore, finally succeeded in a third attempt, in December, 1776. Cameron was retained as a prisoner until the winter of 1778, while Connolly was not

¹⁴⁶ IV, Force Archives, IV, 216. Letter was dated Dec. 8, and stated that Congress highly approved of the acts of the Frederick Committee.

¹⁴⁷ Connolly says the "lowest and most irrational of the inhabitants" with a common surgeon barber for a captain.

¹⁴⁸ IV, Force Archives, III, 479, Dec. 30. Letter of John Hanson to John Hancock. Expenses of maintaining prisoners was over £27. The jail was altogether insecure, so the Committee had to hire rooms and as the militia finally refused to guard the prisoners, a guard had to be hired.

¹⁴⁹ Smith was taken at Little Meadows. Samuel Hughes was then chairman of the Upper District Committee. He had six letters from Connolly (IV, Force Archives, III, 615 ff). Three of these were addressed to British commanders in the west, one to a Tory friend at Pittsburgh, one to his wife and one to an unknown person. From them we learn that Connolly wrote "in bed with two sentinels at the door, with hourly apprehensions of death," and that he hoped to have his wife with him in Frederick, but the Committee "altered their opinion after the man had horses saddled to go for you and the children." I am inclined to believe that Connolly invented this story to please his wife. He writes that "my guard consists of Germans, whose dissonant jargon of High Dutch is not only unintelligible to me, but also extremely disagreeable, by its cursed noise and harshness that it distracts my very soul." The letters are dated December 16.

released until July, 1780, when he was exchanged for Lt.-Col. Ramsay.

Smith gives a curious account of his capture, in a narrative of his adventures,¹⁵⁰ published in 1784, but which is not very reliable. He says on their journey westward, they came to Frederick on a muster day and were ordered to appear the next morning before the Committee. They did not do so, but suddenly and secretly left the town. He calls the guard which captured him "unfeeling German scoundrels, upon whose brows are written assassination, murder and death." On the way to Frederick, they were preceded by drum and fife, playing the rogue's march. In that town they were dragged before "a committee which consisted of a tailor, a leather breeches maker, a shoemaker, a gingerbread maker, a butcher, and two tavern keepers. The majority were Germans and I was subjected to a very remarkable hearing, as follows:

"One said 'You infernal rascal, how darsht you make an exshkape from this honorable committee?' 'Der fluchter Dyvel,' cried another, 'how can you shtand so shtyff for king Shorsh akainst dis koontry.' 'Sacrament,' yelled another, 'dis committee will let Shorsh know how to behave himself,' and the butcher exclaimed, 'I would kill all the English tieves, as soon as ich would kill an ox or a cow.'"

It is needless to remark that this story doubtless has a basis of truth, but is an evident caricature.

Dunmore was driven from Virginia and the West was left to fall before George Rogers Clark. There was no other who could have raised the Western Loyalists and Indians as Connolly might have done. The vigilance of the Western Maryland patriots had caused the failure of a plan which seemed full of danger for the colonial cause.

One of the great services of Western Maryland in the Revolution was rendered as a magazine of supplies. In

¹⁵⁰ "A tour through the U. S. of America," by J. D. F. Smyth.

August, 1775, a Committee of the Provincial Convention reported that of the twelve gun shops in the State, nine were in Frederick County.¹⁵¹ One of these was in Georgetown, four were in Frederick town, and one was near it, two were in Hagerstown and one was in Jerusalemtown. Each of these was able to complete 20 muskets per month, and in these shops, doubtless, Charles Beatty placed the contracts for the 650 "good substantial, proved muskets"¹⁵² which the Council of Safety authorized him to procure.

On December 28, 1775, the Convention appointed Charles Beatty, James Johnson and John Hanson, Jr., a committee to purchase ground, not over one-half acre, in Frederick town, and to erect thereon a gunlock factory. £1200, common money, were appropriated therefor, and the commissioners were requested to be "as frugal of the public money as may be."¹⁵³ The factory was erected and used for a time, but apparently was not wholly a success and it was sold in 1778. Bullets, gunflints, bullet pouches, powder horns, all seem to have been procured from the stores of Frederick town. Frederick being an inland town, it was a good depot for supplies, and we find that in April, 1777, a large quantity of gunpowder¹⁵⁴ was sent thither from Baltimore and "placed in the market house until magazines can be built." Other supplies were kept at this magazine, whence six trumpets were taken for the use of the Continental Horse.^{154a}

Guns were not the only munitions of war supplied by Western Maryland. A large powder magazine¹⁵⁵ was kept

¹⁵¹ Council of Safety, I, p. 65; IV, 524, 530, 531, 546.

¹⁵² Council of Safety, I, 75, 81; IV, 417.

¹⁵³ V, Force Archives, III, 1147, shows the difficulty the managers of the gunlock factory had in getting money.

¹⁵⁴ Council of Safety, III, 209, 211, 216, 295. More powder was sent in June. III, 297. ^{154a} Council of Safety, III, 261.

¹⁵⁵ Proceedings Convention, p. 62; vide 205; Land Records Frederick, B. D. No. 2, folio 471; Act of 1778, ch. 4; Centennial Celebration at Frederick, p. 46. Land occupied in 1876 by Groshon's coal yard, Tyson's warehouse and Sifford's marble works.

in Frederick town and saltpetre works were carried on in the Lower and Middle Districts. The first cannon said to have been cast in this country were made at the foundry of Col. Daniel Hughes,¹⁵⁶ on the Potomac river one mile above Georgetown. A portion of the building yet remained in 1880, while broken fragments of cannon were still to be found in the stream of water flowing at the base of the building.^{156a} John Yost, of Georgetown, is also said to have cast cannon, and Hughes with his brother James and Samuel cast others at the Antietam Iron Works in Washington County. As early as February, 1776, the Council of Safety was sending men to Antietam to prove the cannon manufactured there.¹⁵⁷ Hughes had a contract with the Provincial authorities to cast 20 nine-pounders and 50 eighteen-pounders. Another most important foundry for shells and cannon was the Catoctin Iron Furnace, owned by James, Thomas, and Baker Johnson, a trio of notable brothers. Some of their cannon were said to have been used at the siege of Yorktown.

The value of the Catoctin Furnace to the Province was seen as early as July, 1776, when the Council of Safety wrote to James Johnson asking him to furnish them with 20 four-pound cannon, 20 three-pound cannon, 20 two-pound cannon, and forty swivels, as well as 200 iron pots to supply the place of camp kettles, some to contain 4 and others 2 gallons, with bales or handles. So satisfactory was Johnson's answer, that the Council increased the size of the contract.¹⁵⁸

¹⁵⁶ Scharf's W. Md., I, 135. Cannon for the frigate built in Baltimore in 1777 were cast by the Hughes foundry. Council of Safety, III, 247.

^{156a} Vide Council of Safety, I, 333, 424; IV, 382, 515, 516, 530; Proceedings of Convention, p. 59.

¹⁵⁷ Council of Safety, I, 167, 175, 180, 187, 288; IV, 386. Jacob Schley was directed to furnish ten large rifles carrying a 4 oz. ball on April 19, 1776. Council of Safety, I, 353. Jacob Razor was directed to deliver 12 musquets a month till 100 be supplied at Frederick. Council of Safety, III, 376.

¹⁵⁸ Council of Safety, II, 55, 92, 114.

The minutes of the Council of Safety are filled with reference to military supplies ordered, sent for and supplied by Western Maryland. Virginia, as well as Maryland, made use of Frederick's gunshops. Blankets also were furnished in quantities, as well as broadcloth for the soldiers' clothing.¹⁵⁹ To encourage the production of cloth, grants were made by the Council of Safety to Alexander McFadon, of Georgetown,¹⁶⁰ to enable him to carry on a linen manufactory, to Michael Cochinderfer¹⁵⁹ for a stocking manufactory, and to Robert Wood for a sheeting mill. In each case manufactured goods were to be returned to the Council in value equal to the grant. Not only cloth manufacturers were encouraged, but Jacob Myers also received a grant towards a wire factory.¹⁶²

In fact, Frederick County was the manufacturing part of the State and believed that "especial encouragement should be given to country manufactures."¹⁶³ So far went this principle that when the paper mill was built near Frederick town, the Committee of Observation recommended all to "save their old linen and woolen rags and prefer paper made here to any foreign manufacture." Frederick was also a great granary and storehouse of provisions.^{163a}

With the spring of 1777 came permanent government for Western Maryland, as for the rest of the State. The Committee of Observation passed away, the regularly constituted officers and courts took its place. The best blood

¹⁵⁹ Vide Council of Safety, I, 102, 234, 245, 300, 400, 444; II, 8, 141, 151, 188, 271, 327. So beef cattle, Council of Safety, III, 384.

¹⁶⁰ Council of Safety, I, 20, 190.

¹⁶¹ Council of Safety, I, 473; II, 134.

¹⁶² Proceedings of Convention, p. 266.

¹⁶³ June 21, 1775; IV, Force Archives, II, 1044. On Nov. 27, 1777, Council of Safety (III, 426) ordered clothing to be collected for the State's quota in the army and that what was obtained in Western Maryland should be brought to Frederick town. May 2, 1778, 100 wagons for North Carolina service were passed in the County Council of Safety, IV, 66.

^{163a} Council of Safety IV, 187.

of the region was in the armies, and the records of the Orphan's courts show long lists of those wounded, disabled and slain in the conflicts with the British forces.¹⁶⁴ Sudden alarms like the Brandywine campaign in the autumn of 1777 brought out the militia with arms, if they could be secured, but if not, then without arms, to relieve other militia men already on duty.^{164a}

In the troublous days¹⁶⁵ which marked the beginning of 1777, the whole Western Maryland militia were called out for Continental service, and Thomas Johnson writes that he learns that "Washington militia turn out well. J. Johnson's and Bruce's Battalions (from Frederick County) do us honor. B. Johnson's not so much" and the "Montgomery militia muster very thin." John Stull, commander of the Washington County men, speaks of them as "spirited in the defence of liberty."^{165a}

When three thousand troops were called for from Maryland in March, 1778, Frederick's quota was 309, more than one-tenth of the whole number and more than any other county. In addition to this, 156 men were summoned from Montgomery and 120 from Washington County.¹⁶⁶ When Cornwallis advanced into Virginia in 1781, and Lafayette retreated before him, 500 militia were summoned from Frederick County and 250 from Montgomery County to go to Lafayette's aid, that he might make head against

¹⁶⁴ Centennial of Frederick Co., p. 46. Numerous orders were passed by the Frederick Co. Court appropriating money for the support of the wives and children of soldiers in the Maryland line. Scharf, W. Md., I, 144; Muster Rolls, 630, 632. For difficulty in obtaining recruits, see Council of Safety, IV, 26.

^{164a} Council of Safety, III, 368, 386, 467. Rioting in Baltimore caused the militia of Frederick to be called out in October, 1777. Council of Safety, III, 389, 391.

¹⁶⁵ Council of Safety, III, 15. There was trouble about the commissions for officers in the B. Johnson's Linganore Battalion. III, 236.

^{165a} Council of Safety, III, 42.

¹⁶⁶ Scharf's Md., II, 344; Muster Rolls, 294, 314, 320, 324, 328. Recruits of 1780 are given in Muster Rolls, pp. 334, 341, 344, 346.

the British.¹⁶⁷ In that same expedition against Cornwallis, which was to end at Yorktown so gloriously for the American arms, Frederick County not only sent its citizens as volunteers, but also provided the allied armies with much needed stores of cattle and flour.¹⁶⁸

No hostile force reached Frederick; but, in 1777, the Legislature ordered the erection of barracks there for the accommodation of two battalions.¹⁶⁹ The year before, the Committee of Observation had asked that a post be established at that point and this desire would now be gratified. These buildings were constructed on the eminence at the south end of the town, which bears the local name of Hagerstown hill, and long after the war remained unused, save when some militia encampment made the place gay for a few days. During the Civil War, the barracks became hospitals filled with the sick and wounded soldiers of both armies. At the close of the war, the State devoted the buildings and grounds to the use of the newly established Maryland School for the Deaf. Part of the buildings have been torn down to give place to more modern and convenient structures; but a portion still remains, a relic of the days when Frederick was a frontier town.^{169a}

Baylor's continental cavalry¹⁷⁰ wintered at Frederick and Hagerstown in 1778 and 1779. The frontier post was soon made a prison. We have seen that prisoners were sent to Frederick early in the war. In April, 1777, Frederick was suggested to Gov. Johnson as "the most proper place for those now in Maryland of the Scotch regiment," and in

¹⁶⁷ Scharf, W. Md., I, 144; Md. II, 450.

¹⁶⁸ Scharf, Md., II, 455, 461; Muster Rolls, 652.

¹⁶⁹ Act of 1777, ch. 10. On June 27, Abraham Faw contracted to build the barracks for 8 per cent of the cost and was given £1500 currency. On Nov. 20, he was given £1000 more. Council of Safety, III, 300, 418.

^{169a} Trouble from Indians was feared in Western Maryland in 1778. Council of Safety, IV, 80, 87, 88. So in April, 1779, Council of Safety, IV, 365.

¹⁷⁰ Scharf's Md., II, 340.

May, £300 were appropriated for the subsistence of prisoners of Frederick.^{170a}

After the erection of the barracks, large numbers of Hessians, captured at Saratoga and elsewhere, were sent to Frederick and the Maryland part of the German regiment, Captain Brown's company of matrosses, and Col. Crockett's battalion of Virginia troops were ordered to act as their guards.¹⁷¹ As early as May, 1777, prisoners were sent to Hagerstown rather than to Frederick, "where there's already some sort of provision," since "great part of our powder is at the latter place."^{172a}

Before the barracks were completed, in December, 1777, Col. Beatty, who commanded the forces in the town, received 100 prisoners, whom he was compelled to confine temporarily in the jail. Late on the afternoon of Christmas day¹⁷² they set fire to the jail and made an attempt to escape. Beatty ordered every man to arm himself as quickly as possible and repair to the jail-yard. The jailer opened the gate and about one-third of the prisoners attempted to rush out, but their ardor was quelled with the butt end of muskets. After the fire was extinguished, the prisoners were removed to the Tory jail.

Though prisoners were in Frederick during the entire war, the greatest number arrived after Cornwallis's surrender.¹⁷³ Two Hessian regiments and the Bayreuth Yag-

^{170a} Council of Safety, III, 213, 248.

¹⁷¹ Centennial of Fredk., p. 47. Address of the Hon. Jas. McSherry. Council of Safety, III, 450, 490, 506.

^{172a} Council of Safety, III, 246, 384.

¹⁷² Scharf, W. Md., I, 141. In Feb., 1777, owing to the alarm in Baltimore, the prisoners there were sent to Frederick and thence in August they were transferred to Sharpsburg. Scharf, W. Md., I, 141; Council of Safety, III, 346, 407. Certain Carolina prisoners sent to Frederick in 1777 were allowed to go at large within three miles of the town. Council of Safety, III, 336.

¹⁷³ In Sept., 1777, four prisoners were sent to Frederick to be kept in the "Log jail, commonly called the Tory jail." Council of Safety, III, 368 (but see p. 380). An appropriation was made in July, 1777, to pay for removal of prisoners from Frederick to

ers were sent to Frederick at once, while the other Hessians, who were first sent to Winchester, Va., were soon transferred thither. "On the march through Maryland, the German settlers showed them much kindness and German speech and friendly hospitality gave them much comfort." Their food, too, improved, "though during the ensuing winter provisions ran short" and complaints were made of "the bad food and the utter want of clothing." During the summer of 1782, the prisoners were more comfortable. Many were allowed to work on the neighboring farms, married daughters of the German settlers, ransomed themselves for about 80 Spanish milled dollars apiece, and remained in Frederick County.¹⁷⁴ If they could not raise the necessary amount for ransom, the Americans frequently advanced the money and kept the Hessians as "redemptioners." Others of the prisoners died, deserted, or enlisted in the American armies, so that the regiments became greatly reduced. In September, 1782, 300 English prisoners from Cornwallis's army came from Winchester to Frederick, escorted by an American volunteer corps made up of various nationalities, including 40 Anspach-Bayreuth soldiers, who had been released on joining the American army.

The little Mountain City was truly cosmopolitan during that year. In addition to English, German and American troops, it was the station for some time of the French legion commanded by the Marquis la Rouerie.¹⁷⁵ His tribute to the State and town was most flattering. Writ-

Burlington. Council of Safety, III, 304; vide 467, 468; IV, 238. Eelking's German Allied troops in the North American War of Independence. As early as Feb. 1778, Col. Beatty suggested that some of the prisoners might be permitted to work for the inhabitants. Council of Safety, III, 490, 491.

¹⁷⁴ Between 1820 and 1840, there died in Frederick County no fewer than 15 foreign German allied troops. They made good citizens and their descendants were, for the most part, Union men during the Civil War.

¹⁷⁵ Centennial of Frederick, p. 48. This was Armand, the famous Chouan hero in the Vendée.

ing to Governor Paca, on December 28, 1782, he expressed the thanks of himself and his soldiers "for the friendly dispositions and behaviour of the Marylanders towards us. The town of Frederick, in which we have made the longest station, has more particularly evidenced to us the worthy and high character of that country. Permit me to add here that, where people are sensible, as these, of the rights of military men to their attention and care, they do deserve having respectable troops as the Maryland line, and do create in others wishes for the opportunity to serve them."

The barracks at Frederick town were not sufficient to hold all the prisoners, and so, on December 16, 1777, Joseph Nourse, of the War Office, from York, Penn., wrote to Col. Moses Rawlings, asking that he examine Fort Frederick and report as to its condition, accommodations, etc., as Congress thought of sending prisoners of war there. Rawlings acted with promptness and found the old colonial fort¹⁷⁶ in such condition that it could easily be put in order for the desired object. As the country about the fort was thickly settled, a "pretty strong guard was found necessary." The Assembly resolved to repair the barracks and work was at once begun. Two years later, Pickering writes to Rawlings stating that it is impossible to send prisoners to Fort Frederick for want of a guard. If Maryland will provide a standing guard there, the Continental authorities will obtain an escort guard from Pennsylvania and send prisoners there.

Two months later, on December 28, a letter was sent to

¹⁷⁶ Council of Safety, III, 439, 443, 445, 450, 451, 453, 487, 506, 545, 551, 555; IV, 148, 202, 336, 520, 524, 542, 546. On Feb. 23, 1778, the Council ordered the guard in Frederick to consist of one company of militia, consisting of 60 non-commissioned officers and men, and in Washington County to consist of one company of fifty non-commissioned officers and men for each 150 prisoners. The guards should serve for two months. Council of Safety, III, 516, 517, 536. Through difficulty in obtaining proper guard there were numerous escapes. Council of Safety, III, 518, 530. Capt. John Kerschner's Company acted as guards in 1778. Muster Rolls, p. 328.

Rawlings which affords quite an insight into the keeping of the prisoners. "We wish you would let out as many as you think will behave with propriety, in order to save public provisions, for you will observe as a rule that no prisoner employed by a private person is allowed to draw rations. But if you perceive any desertions or any capital inconvenience from their being out of the garrison you will call them in, that no loss that prudence will prevent may arise to the public by lessening the means of redeeming our own subjects."^{176a}

In the next year, on October 17, the Continental war office asks Rawlings to "call in all the prisoners in the neighborhood of your post or its dependencies and, as the practice of letting them out to farmers and suffering them to go at large is attended with great mischiefs, you will in future keep them in close confinement." Consequently the prisoners were variously employed within the fort, "daubing and underpinning the barracks, cleaning and repairing the well, etc., and with great leniency, they were paid for executing these tasks. After Cornwallis's surrender with the plethora of prisoners thus in our hands, a large number of them were ordered to Fort Frederick. On October 26, 1781, the Light Infantry, the 17th, 33d, 71st and 80th Regiments of the line, the Prince Hereditary Regiment, de Bose Yagers, the British Legion, and North Carolina Volunteers were sent thither. Field officers were allowed three enlisted men as servants, captains two, and other proper warranted officers one. I have found no record of the life of these prisoners at the old fort."^{178b}

While kind to prisoners, the Frederick County people were ever severe towards their fellow-citizens who clung to their allegiance to Great Britain. It is true that the judgments of outlawry for treason pronounced on the

^{176a} See also Council of Safety, IV, 348, 363.

^{178b} See Am. Hist. Reg., II, pp. 862-65, article on Fort Frederick by Judge Henry Stockbridge.

Dulaney, the Episcopal clergy and other prominent citizens of the county¹⁷⁷ came from the General Court at Annapolis and the confiscation act of 1780,¹⁷⁸ whereby so much of the land of Frederick County found new owners, was passed by the Legislature of the whole State, but the local bodies were no less severe. Heavy fines were imposed on those who drank the "health of King George and damnation to Gen. Washington and the Congress of the United States," and who said they wished "all persons who went about warning the people on the militia duty, might be hanged not by necks but by the heels." The most famous proceeding against Tories was taken in 1781. In that year there was a second plan of the British to cut the colonies in half. Cornwallis was to march inland from the Chesapeake and was to be met by enrolled bodies of Tories, whose help would enable him to cut off the South from the North.¹⁷⁹ The tale which has come to us is that this far-reaching scheme failed; because, like the earlier one of Connolly, the plot was discovered in Frederick County. A disguised British officer was to meet a Tory messenger at a fixed place, to put him in possession of all of the details of the plan. The watchfulness of the Americans prevented the officer from fulfilling his part of the agreement, while the Tory's papers fell into their hands. These revealed the plot and the names of the prominent conspirators and they were accordingly arrested. On July 25, seven of the accused¹⁸⁰ were brought to trial at Frederick before a court consisting of Alexander Contee Hanson, afterwards Chancellor of the State, Col. James Johnson and Upton Sheredine. The defendants were found guilty of high treason in "enlisting men for the service of the king of Great Britain and administering an oath to them to bear true allegiance to the said king and

¹⁷⁷ Scharf, W. Md., I, 143.

¹⁷⁸ Act of 1780, ch. 45.

¹⁷⁹ Scharf, W. Md., I, 142.

¹⁸⁰ Peter Sueman, Nicholas Andrews, John George Graves, Yost Pleckler, Adam Graves, Henry Shett, Caspar Fritchie.

to obey his officers when called on." We can imagine the crowd in and about the court room when the defendants were declared guilty¹⁸¹ of the crime of doing what even the judges themselves would have done ten years before, and we are sure that the excited assemblage was hushed to awe-struck silence when the sentence was pronounced. Turning to the prisoners and calling each by name, Judge Hanson told them not to consider the proceedings a "solemn mockery," nor to look for a pardon. They had been convicted "upon the fullest and clearest testimony." "Had it pleased heaven to permit the full execution of your unnatural designs, the miseries to be experienced by your devoted country would have been dreadful even in the contemplation. The ends of public justice, the dictates of policy and the feelings of humanity all require that you should exhibit an awful example to your fellow-subjects and the dignity of the State, with everything that can interest the heart of man, calls aloud for your punishment."

Then, after telling them to make their peace with God, he uttered the terrible words: "You shall be carried to the gaol of Frederick town and be hanged therein; you shall be cut down to the earth alive and your entrails shall be taken out and burnt while you are yet alive, your heads shall be cut off, your body shall be divided into four parts and your heads and quarters shall be placed where his excellency the Governor shall appoint. So the Lord have mercy upon your poor souls." Four were pardoned, the other three suffered the full vigor of the law. The tribunal which tried these was a special court of oyer and terminer, called to try Tories.¹⁸² Many others were fined and imprisoned. A month after the trial, on August 17, 1781, a

¹⁸¹ There was a jury trial.

¹⁸² Other persons were convicted of the lesser crimes of persuading a man to return to and acknowledge dependence to the crown of Great Britain; of dissuading a man from supporting the independence of the United States, and of affirming that the King has power over this State.

meeting¹⁸³ of the citizens was called to determine what should be done with three men,¹⁸⁴ who refused to take the new paper money. They were excused on apologizing, and promising for the future to receive paper money at par with silver and gold; but, that there might be no mistake as to the attitude of the county, the following resolution was unanimously adopted: "That we will exert our utmost endeavors in supporting the credit and circulation of the said new paper money at par and we will punish, by Tarring and Feathering, and expulsion from the county, any person who shall hereafter be so hardy as to act contrary" to these resolves. The purpose here was commendable, the proposition disgraceful. This resolve is the one blot on the revolutionary history of Frederick County, and it is to be hoped that its lawless intention never was carried out. Every other act of the Frederick County men was done decently and in order.

At last the war ended. In March, 1783, the first news of the peace came to Frederick town. There was great rejoicing among the citizens that the long struggle was over, among the prisoners that they soon would be released. On April 22, General Lincoln,¹⁸⁵ who was commanding in Frederick at the time, made official proclamation of peace, and a patriotic demonstration of a day and a night followed. The fireworks for the night's display were prepared by a Bayreuth captain and his men, while the German musicians played at the ball given in honor of the occasion. There was general fraternizing and many of the German officers were guests at all the festivities. The only shadow on the sun of joy was that an excitable French captain had his men charge the prisoners who cheered for King George. In this unfortunate occurrence, four German soldiers were mortally wounded.

¹⁸³ Col. Thos. Price in the chair. Scharf, W. Md., I, 144.

¹⁸⁴ A previous meeting on the subject had been held on Aug. 7.

¹⁸⁵ Elking, op. cit.

Throughout the county there was rejoicing. At Israel's Creek,¹⁸⁶ after listening to "an excellent sermon much to the purpose," the people enjoyed a most elegant entertainment, "drank thirteen toasts, fired a salute of thirteen platoons, and gave thirteen cheers. The evening saw an illumination and bonfires and the whole was concluded with propriety and decorum." In May, the German prisoners were released and one of them put down in his diary, "that the people, and especially the women, were very sorry to bid them good bye."

The quiet mountain town and the rich country around it, the western settlements in the Alleghanies, the more level plains of Montgomery, saw no more of martial array nor heard any more rumors of war for nearly eighty years. They had done nobly in their country's cause, they had been steadfast in the struggle for independence, they had believed in the triumph of the new nation and they had their reward. In considering the history of a war, we often think too exclusively of the armies in the field and forget the people from whom the army was recruited and by whose support it was maintained. But in whatever line of patriotic service we test the conduct of Western Maryland during the Revolution, the whole country has reason to be grateful for vigilant performance of duty.

¹⁸⁶ Scharf, W. Md. I, 145.

STATE BANKING IN THE UNITED STATES
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SERIES XX

Nos. 2-3

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
(Edited 1882-1901 by H. B. ADAMS.)

J. H. HOLLANDER J. M. VINCENT W. W. WILLOUGHBY
Editors

STATE BANKING IN THE UNITED STATES SINCE THE PASSAGE OF THE NATIONAL BANK ACT

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BALTIMORE
THE JOHNS HOPKINS PRESS
PUBLISHED MONTHLY
FEBRUARY-MARCH, 1902

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The Lord Baltimore Press
THE FRIEDENWALD COMPANY
BALTIMORE, MD.

PREFACE

The following essay is a study of state banking in the United States as it has grown up since the Civil War. This movement may be viewed from two sides. In the one aspect it is a legal and in the other an economic phenomenon. Since the two are closely related, it has been impossible to keep their treatment entirely separate at all points, but in the main the first part of the work—State Bank Legislation—deals with the evolution of the present state banking laws. As it would have been wearisome and unprofitable to have described this legislation in all its details, only the main threads have been followed. It is believed, however, that the regulations concerning incorporation, capital, real estate loans, stockholders' liability, and supervision comprise those parts of the laws which are fundamental. While there are provisions on other points, they are not basic. In the concluding chapter of the first part, the statistics of state bank failures have been examined as furnishing the only practicable test of the efficiency of state bank regulation.

In the second part of the work—The State Bank as a Credit Agency—attention has been given to the economic side of the movement, to the causes which have produced a large expansion of state banking at the expense of other institutions for supplying credit. Throughout the earlier part of my work, I received constant aid from the late Dr. Sidney Sherwood. I wish also to express my thanks to Dr. J. H. Hollander who kindly read my manuscript and made many helpful suggestions.



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STATE BANKING IN THE UNITED STATES SINCE THE PASSAGE OF THE NATIONAL BANK ACT

PART I.—STATE BANK LEGISLATION INTRODUCTION

The term “state bank” has been used in the United States in many different senses. But whatever the variance in meaning, such banks have always had one common characteristic—incorporation under state authority. “A state bank,” says Morse, “is one organized under a state law or a charter granted by the legislature of a state and derives its power from state sovereignty.”¹ In recent years, the “state banks” have sometimes been confused with private banks. This has come about from the fact that in some states, the same requirements are made of incorporated and unincorporated banks. Since both classes of banks are equally subject to state regulation they are all called “state banks.”

An unincorporated bank, however, is a private bank. The definition given in the Kentucky Statutes correctly represents present usage. “Private bankers,” runs the law, “are those who without being incorporated carry on the business of banking.”² Incorporation is an important feature and it is necessary to carefully distinguish the two classes. A failure to do this has sometimes caused erroneous statements.³

¹ Morse on Banks and Banking, 3d ed., sec. 16.

² Laws of Ky., 1893, chap. 171, sec. 32.

³ See pp. 66, 67.

Not every incorporated bank, however, is a "state bank" in the sense in which the term will be used hereafter. Stock savings banks and loan and trust companies are capitalized corporations erected by state law, but it is only with banks of discount and deposit that this essay deals.* It is to be admitted that in many states, savings banks with a capital stock as well as trust companies are included in "state banks" in popular and even, in some cases, in official language, but there seems a growing disposition to classify these separately and to restrict the term "state bank" to banks of discount and deposit. Further justification of this use may be found in the fact that four-fifths of the capitalized banks incorporated under state laws are of this character, and it seems permissible to use the term without qualification to express the most numerous class. "State banks" then as the expression is used in the following pages, are banks of discount and deposit (as distinguished from savings banks and trust companies) incorporated under state sovereignty (in contrast with private banks which are unincorporated and with national banks, which are formed under the national law).

In 1860 there were in the United States 1562 state banks. Owing to the repressive influence of the national bank act, hastened in its effect by the ten per cent tax on state bank notes, the number by 1868 had fallen to 247. Corresponding to this decline in numbers and importance, was the cessation of state banking legislation. The state banking systems became moribund; the old laws regulating banks of issue were generally swept away by code revisions, or remained unchanged on the statute books.

The antebellum laws had been aimed solely at securing the safety of the bank note; the depositor was regarded as amply able to care for himself, just as the bank-note holder had been considered earlier when note issuing was

* The separation of the statistics of stock savings banks and state banks has not been possible in all cases. See Appendix, p. 112.

a right at the common law. It is true that the depositor was protected by many of the regulations under which banks were placed, but this was purely incidental to the main purpose of the laws. In fact, by giving the note holder a prior lien on assets, the depositor's security was somewhat impaired. The feeling that note issue alone needed governmental oversight persisted for a considerable time after 1868. The national banks had a monopoly of bank circulation, and the regulation of state banks was considered needless after the prime occasion for it had been taken away. As the importance of note issue decreased, and the deposit function became prominent, it began to be apparent that governmental regulation of banks was of value in protecting depositors. It is a far cry from the Michigan bank act of 1857 to that of 1887, but the national banking law has undergone the same change of purpose. The Comptroller of the Currency, in his report for 1898, speaking of proposed reforms in the national banking act, says: "In their present form, they seem to ignore the interests of bank depositors with whose protection the Comptroller is peculiarly charged,"⁵ and again, "it is the belief of the Comptroller that the proposed preference of the note holder over the depositor . . . is not only inherently wrong and unjustified by any grounds of public policy."⁶ And yet, the very law by which his office is created recognizes the superior right of the note holder, and his title indicates the view held of the duty of his office when it was established.

For a considerable period the legislatures left the state banks free to make their own way. In some states, old laws unrepealed and adapted only to the needs of banks of issue, somewhat hampered their growth, but in the main,

⁵ Report of the Comptroller of the Currency, 1898, Vol. I, p. XII.

⁶ It is not intended, of course, to express any opinion as to the correctness of this view. It is simply pointed out that the present view of the aim of the national banking act varies widely from that held when it was enacted.

they were left with no interference. As late as 1892, Mr. Stimson said, "It seems unnecessary to incorporate the state banking laws in this edition. Nearly all the states, except the newer states and territories, have special chapters in their corporation acts concerning banks and moneyed institutions, but these chapters are usually of old date, and have practically been superseded for so long a time by the national banking laws that they have become obsolete in use and form."⁷ A more careful examination would have shown a decided movement in the years immediately preceding 1892. Since that time, legislation has been abundant. There are very few states which have failed, in the last ten years, to do something in the way of enacting banking laws, and since the power of issue is taken away, the purpose of these laws, so far as they have dealt with present conditions, has uniformly been the better protection of depositors.⁸ At present, the body of

⁷ American Statute Law, Vol. II, sec. 9500, p. 572.

⁸ It is of interest to note that in two states at least (Nebraska and Kansas) the question has recently been raised whether deposits cannot be secured by a guarantee fund. Just as in the case of note issue, there has been in many countries a transference of credit from the individual bank to the wider credit of a system of united banks, so it is thought that if the security of deposits can be based on the credit of many institutions, a larger number of depositors will be obtained. The experiment would be interesting, but its success is doubtful. There seems, despite their fundamental similarity, to be a substantial difference in the parts which credit plays in the bank note and in the deposit. The tendency of modern legislation is to make bank money equivalent to specie, so far as credit is concerned, by resting it either on the credit of one large state institution, or else on the joint liability of a number of banks. It seems probable, on the other hand, that individual credit is still of considerable importance in the matter of deposits, and that this is a safeguard. A depositor does not place his money in a bank, as a general rule, simply because it is a state or national bank, but because he knows something of that particular bank. It may be admitted that the system acquires relatively more and more importance as regulation progresses, and it is quite conceivable that deposits may some day be made on the basis of the credit of the system. It is undoubtedly true that many deposits are so made at present, but the number made on individual credit,

state banking laws is large in bulk and important in practice. It is this legislation, its growth and characteristics, its causes and purposes which it is the aim of the present essay to describe.

In the evolution of the state banking laws, four elements have actively entered. While each has acted continuously, their influence has not been equal at all times:

(1) The national banking act has, especially in the earlier stages, been the model, to which the states have conformed their laws. It represented the only body of legislation on the subject, which was well known to the people. With its provisions, restrictions, and methods of operation, they were well acquainted, and it was natural that when the states adopted the policy of regulating banks of discount and deposit, they should follow closely its general plan.

(2) It was found, however, that the great majority of the state banks were the product of economic needs which the national banks did not satisfy, and it was necessary to make such changes in the national act as were required by these conditions.

(3) In the states, there was already a mass of laws regarding corporations in general. Banks have not been differentiated as fully from other corporations as the adoption of the national bank act in its entirety would have required. In some important respects, the influence of the existing corporation law has been paramount, while in others, it has yielded more or less fully.

(4) Recently there has grown up a strong interstate influence. States about to legislate on the subject look to other states where similar economic conditions prevail, and where experience has already been had. The banking laws of Kansas have been appreciably affected by the

or to be more exact, not made because of lack of credit, is large enough to afford an important check on bankers. To guarantee deposits would result in giving the banker who is reckless a freer rein since public opinion would no longer be feared.

older legislation in Missouri, and Oklahoma has adopted to a considerable extent the methods of Kansas. Certain important improvements, adopted by one state and found to work well in practice, have been borrowed by others. This movement is as yet in its infancy, but it promises well. It may be said that at present in the systems which have been longer established, the influence of the laws of other states is far more important than any other factor. The national bank act has been already utilized as far as circumstances seem to allow, and in solving the remaining problems, nothing is so valuable as the experience of other states working under like conditions for a similar end.

CHAPTER I

INCORPORATION

The power to charter banking, as well as other corporations, is inherent in the legislatures of the various states, and is limited only by constitutional provisions. Many of the state constitutions, at one time or another, have prohibited charters for banking, but at the present time, in only one state is the legislature so restrained. The Texas Constitution of 1876, which is still in force, provides that "No corporate body shall hereafter be created, renewed, or extended with banking or discounting privileges."¹ While Texas is unique among the states in its absolute prohibition of state banks,² there are in many of the state constitutions, provisions regulating the manner in which the legislature may exercise its prerogative.

In the twenty years prior to the Civil War, the principle of the referendum was applied to banking charters in nearly all the states of the Middle West. Iowa, Wisconsin, Illinois, Michigan, Ohio, and Kansas, in quick succession, inserted in their constitutions clauses requiring banking laws to be submitted to popular vote for ratification.³

¹ Constitution of Texas, 1876, Art. VII, sec. 30. The policy of Texas, from the beginning of its history as a state, has been almost invariably opposed to banking corporations. The constitutions of 1845, 1861 and 1866 contain the clause cited above. The constitution of 1868 did not prohibit bank charters, and a small number were granted during the period 1868-1876.

² It has sometimes been stated that Oregon should be placed with Texas in this respect, and Art. XI, sec. 1, of its constitution, seems capable of this construction, but the Supreme Court of Oregon, in the case of *State ex rel. Hibernian Savings Bank*, 8 Or. 396, after an examination of the "Journal of the Constitutional Convention," held that only banks of issue were prohibited.

³ Iowa (1846), Art. VIII, sec. 5; Wis. (1848), Art. XI, secs. 4, 5;

In 1875, the same provision was adopted in Missouri,⁴ so that, at the present time, it is to be found in the constitutions of seven states. But its force has been much weakened by the interpretation of the courts, several of which have held that the provision applies only to laws concerning banks of issue, and that legislative acts incorporating banks of discount and deposit need not be submitted to the vote of the people.⁵ In Michigan, Illinois,⁶ and Wisconsin, acts for the incorporation of banks of any kind must still be approved by the popular vote. Only the general banking law is subject to popular sanction in Michigan, but in Wisconsin⁷ and Illinois,⁸ every amendment of the banking laws must be so ratified. These provisions were intended to provide against conditions which no longer exist, and whatever their value may have been as a protection against the evils of an over issue of bank notes, their only effect at present is to render the adaptation of the banking laws to the changed needs of the present day slow and difficult.⁹

Of far more importance to the development of state banking in recent years than the referendum requirements, has been the gradual increase of general incorporation laws at the expense of special charters. It is needless to

Mich. (1850), Art. XV, sec. 2; Ill. (1848), Art. X, sec. 5; Ohio (1851), Art. XIII, sec. 7; Kansas (1859), Art. XIII, sec. 8.

⁴ Constitution of Missouri (1875), Art. XII, sec. 26.

⁵ Decisions holding referendum provisions applicable only to banks of issue: Kansas, *Pope vs. Capitol Bank*, 20 Kansas, 440; Iowa, 70, N. W., 752; Ohio, 42, O. S., 617. In Missouri, the words of the constitution themselves restrict the application to banks of issue.

⁶ It was held in *People vs. Loewenthal*, 93 Ill., 191, that the referendum clause in the constitution of 1848 applied only to banks of issue, but the constitution adopted in 1870 extended the principle to all incorporated banks. (Constitution of Illinois, 1870, Art. XI, sec. 5.) This was interpreted in *Reed vs. People*, 125, Ill., 592.

⁷ *Rusk vs. Van Nostrand*, 21 Wis., 159; *Van Steenwyck vs. Sackett*, 17 Wis., 645.

⁸ *Reed vs. People*, cited above.

⁹ See p. 27.

say that this movement has not been confined to banking corporations. In fact, banking has been somewhat later than other business pursuits to receive freedom of incorporation. Banking charters were granted at first in all the thirteen original states only by special acts. Early in this century, the substitution of general incorporation laws for special charters in some kinds of business became common in the New England and Eastern States,¹⁰ but general incorporation laws for banking were longer delayed.¹¹ In his report for 1849, Hon. Millard Fillmore, Comptroller of the State of New York, thus described the circumstances which led to the passage of the general incorporation law for banks: "The practice of granting exclusive privileges to particular individuals invited competition for these legislative favors. They were soon regarded as a part of the spoils belonging to the victorious party and were dealt out as rewards for partisan services. This practise became so shameless and corrupt that it could be endured no longer and in 1838, the legislature sought a remedy in the general banking law." According to the provisions of the Constitution of New York adopted in 1846, charters were to be granted under general laws, "except where in the judgment of the legislature the objects of the corporation cannot be obtained under general laws,"¹² but the desirability of incorporating banks by special charters was not left to the judgment of the legislature; they were in all cases to be formed under general laws.¹³ As long as banking charters could be granted only to approved persons, who were able to maintain heavy specie reserves, there was difficulty in applying the general

¹⁰ "Political Essays," by Simeon E. Baldwin, p. 119.

¹¹ For general treatment of ante-bellum movement toward general incorporation laws for banks, see "Philosophy of the History of Bank Currency in the United States," by Theodore Gilman, *Banker's Magazine*, Vol. 50, p. 347.

¹² Constitution of New York (1846), Art. VIII, sec. 1.

¹³ Constitution of New York (1846), Art. VIII, sec. 4.

incorporation idea to banks but the bond deposit gave an automatic method of securing the safety of the notes and enabled banking to become free.¹⁴

The states of the Middle West followed the lead of New York, and "freedom of incorporation" became their settled policy,¹⁵ but in nearly all of them, the constitution permitted also the establishment of a state bank with branches. With the extinction of state bank currency, however, the general law in all these states became and continues to be the sole form of bank incorporation.¹⁶ The policy of general laws became the fixed rule of the West, and as each new state was added to the Union, it placed in its constitution clauses prohibiting the formation of corporations under special act, and giving the legislature the right to confer corporate privileges by general law.¹⁷

In the other sections of the United States, a very different state of affairs has existed. In the New England, Eastern, and Southern States,¹⁸ down to the time of the Civil War, the system of special charters was almost universal. Free banking on bond deposit had been adopted in many

¹⁴ Michigan, in 1837, had inaugurated a system of "free" banks with a circulation based on real estate. See "Banking in Michigan," by Alpheus Fitch. Senate Ex. Doc. 38, pt. 1, 52 Cong., 2d sess.

¹⁵ Mich. (1850), Art. XV, sec. 1; Ind. (1851), sec. 201; Ohio (1851), Art. XIII, sec. 1; Kansas (1855), Art. XIII, sec. 1; Wis. (1848), Art. XI, secs. 4 and 5; Iowa (1846), Art. VIII, sec. 1; Minn. (1857), Art. X, sec. 2.

¹⁶ In Illinois, special charters were used to a slight extent before 1870, when the constitution required general laws. Constitution of Illinois (1870), Art. XI, sec. 1; vide P. & Chicago Gas Trust Co., 130, Ill., 268.

¹⁷ Cal. (1849), Art. IV, sec. 31; Nev. (1864), Art. VIII, sec. 1; Neb. (1866), Corp's, sec. 1; Col. (1876), Art. XV, secs. 2, 3; N. D. (1889), sec. 131; S. D. (1889), sec. 191; Mont. (1889), Art. XV, secs. 2, 3; Wyo. (1890), Art. X, sec. 1; Wash. (1889), Art. XII, sec. 1; Or. (1857), Art. XI, sec. 2; Utah (1895), Art. XII, sec. 1.

¹⁸ The nomenclature of the groups of states followed in this essay is that used by the Comptroller of the Currency in his report for 1899; the states included in each group may be seen by a reference to the tables in the appendix.

of these states, but only in New York as an exclusive system. By the side of the specially chartered banks, the free banks played but an insignificant rôle, and when, by the imposition of the ten per cent tax on notes, no opportunity was left for the issue of currency, these states returned to the exclusive use of special charters.

In the New England States the system of special charters has held its ground, so far as banking is concerned.¹⁹ This has been caused by the fact that the national banks have filled entirely the needs of this section. Very few banking charters have been granted in any of the New England States during the past thirty-five years. Banking corporations occupied an anomalous position in the Eastern States. While corporations for carrying on almost every other business might be organized under the general laws, it required a special act of the legislature to form an association for banking purposes.²⁰ The old free banking laws were retained in some of these states, but they were not suited to the needs of the banking business, and special charters were nearly always secured. The feeling for an assimilation of banking to other lines of business caused the prohibition of special charters in the Pennsylvania Constitution of 1875,²¹ and in the New Jersey Constitution of the same year.²² Maryland has a general law for the formation of banking corporations, but it is little used, and practically all banks are formed under special acts.²³ Delaware alone of this group retains the old form of incorporation as the sole means of securing a charter, its recent constitution expressly exempting banks

¹⁹ Vermont permits the organization of banks under a general law, which is antebellum in its main outlines. In Massachusetts, also, banks may be organized under its old law, but the conditions are too onerous for banks simply of discount and deposit.

²⁰ New York, of course, was an exception.

²¹ Art. III, sec. 7.

²² Art. IV, sec. 7, clause 11.

²³ The Maryland Constitution of 1867 permits the legislature to use its discretion in the matter of special acts of incorporation. Art. III, sec. 48.

from the corporations which may be formed under general laws.²⁴

The same tendency, but slower in operation, may be observed in the Southern States. The agricultural interest has always been predominant in the South. Until quite recently, commercial and manufacturing industries have not been of importance, and in consequence freedom of incorporation has made but slow advance. Even ordinary business corporations were, in many of the states, chartered by special act nearly as late as the Civil War, and in only a few states were there general banking laws. Until the period of Reconstruction, special charters were not forbidden in the Southern State constitutions. The framers of the Reconstruction constitutions were familiar with the provisions—then in force in the Middle West—requiring corporations to be formed under general laws, and they attempted to make that the policy of the South. In many cases the clauses inserted with this aim were either so limited in application as to leave the hands of the legislature practically free, or they were omitted in the constitutions adopted somewhat later; but in Tennessee,²⁵ Arkansas,²⁶ and West Virginia,²⁷ they have remained in force. More recently, Louisiana,²⁸ Mississippi,²⁹ Kentucky,³⁰ and South Carolina³¹ have, by constitutional provisions, adopted the general corporation act as the exclusive method of incorporation. An amendment to the constitution of Georgia, adopted in 1891, permits the General Assembly to incorporate banking companies by general act. While these changes did not affect, in most cases, other lines of business, they marked, in nearly all

²⁴ Constitution of Delaware (1897), Art. IX, sec. 1.

²⁵ Tenn. (1870), Art. XI, sec. 8.

²⁶ Ark. (1868), Art. V, sec. 48.

²⁷ W. Va. (1872), Art. XI, sec. 1.

²⁸ La. (1870), Art. 46; also (1898), Art. 49.

²⁹ Miss. (1890), sec. 178.

³⁰ Ky. (1891), sec. 59, subd. 17.

³¹ S. C. (1895), Art. IX, sec. 9.

cases, a change in the method of granting banking charters.³² Even in those states where special acts are still constitutionally possible, they are, with one exception, rarely used. Virginia, Florida, and Alabama all have free banking laws under which nearly all banks are incorporated. In North Carolina alone does the special charter hold entire possession of the field.

The net result of these changes has been a complete reversal of systems of bank incorporation in the Southern and Eastern States. Where, as late as 1870, special charters were the almost universal custom, at present only two states, Delaware and North Carolina, do not permit the formation of banks under general laws, and in only a few others, Virginia, Alabama, Florida, and Maryland, is the special act used with more or less frequency. The labor imposed on the legislatures by the increase in the number of applications for banking charters has been the most potent cause in bringing about this change.³³ There has also been at work the continually acting tendency toward assimilation of state constitutions.

Contemporaneously with the movement toward freedom of incorporation has gone what may be styled the differentiation of the "general incorporation law."³⁴ In nearly all the states, prior to the Civil War, there had grown up "general incorporation laws," under which, to use the ordinary phraseology, "associations for carrying on any lawful business" might be formed. Before 1860, banks

³² Since 1885, banks may be incorporated by general act in S. C. Laws of S. C., 1885, XIX, 212.

³³ This is illustrated by the case of Georgia. The plan first adopted was the framing of a special charter, and then granting to all succeeding applicants the powers and imposing the liabilities and duties contained in it. Ga. Laws, 1891, p. 172.

³⁴ The "general incorporation law" has a technical meaning in American law. Previous to this, the term has been used in its larger sense in contradistinction to special charters, but henceforward it will be used in its stricter meaning of the body of law under which the great mass of corporations are formed in the American States.

were never formed in any of the states under the "general incorporation law"; special restrictions were always imposed, but these regulations related largely to the right of issue and its proper exercise. After the imposition of the ten per cent tax on state bank notes, it was apparently felt in many of the states that the business of banking could be left to individual enterprise without any special regulation. Consequently in many of the states the "general law" came to include banking in the lines of business for the conduct of which corporations might be formed. In some of the "free" banking states, the old provisions were retained unaltered, and in others, they were repealed and resort had to the "general incorporation law." The newer states in the West allowed banking corporations to be formed under the general law. While there were a few states which differentiated banking from other corporations before 1887, the movement may fairly be considered as having begun about that time. Since then in nearly all the states,⁸⁵ there has been a growing tendency to treat banking differently from other lines of business, and to recognize that it needs special regulation. This was undoubtedly caused by the increase in the number of banks about that time,⁸⁶ and the consequent attention which the subject received.

One difference between the national and the state laws concerning banking will be readily seen. In the states, the banking law is part of a larger whole; it simply embodies the differences which the legislature has seen fit to make between banking and other lines of business. The foundation on which the state banking laws rest is the general corporation law; as a general rule, therefore, the state laws are less exhaustive than the national, since it

⁸⁵ There still remain a few states having general laws, in which banks are under the same regulations in every respect as other lines of business. They are Arkansas, Idaho, Oregon, Nevada. In many others, the differentiation is slight.

⁸⁶ See p. 74.

is not necessary to legislate specially on points which are already satisfactorily covered in the general law. The national banking law, on the contrary, except for judicial interpretation of the common law governing corporations, is full and complete in itself. In order to understand the development and the present status of the state banking laws, reference must constantly be had to the principles of the "general incorporation law."

Three forms of incorporating state banks have been in use since 1865: (1) The special charter; (2) The undifferentiated general incorporation law; (3) The differentiated general incorporation law. While very few states have passed through all these, it is yet true that if we look at the country as a whole, we shall find each method predominant at a given time. From 1865 to 1875, the special charter was in use in most states, and from 1875 to 1887, the "general incorporation law" was the controlling type, and since then the differentiated incorporation act has become the almost universal form of bank incorporation. It is to be noted that the special charter and the "general incorporation act" were contemporaneous, springing from different social and political conditions. A high degree of regulation may be built up under special acts, as was the case in most of the states prior to 1860. The same thing may be observed in the Southern States. For example, North Carolina, while still keeping the special act, has a much higher degree of regulation than many states with freedom of banking incorporation. It is not therefore true that the stages described above represent a consecutive development; it is rather to be understood that it is into the last form that both the others directly transform themselves. Since, however, at the beginning of the present movement, the "general incorporation law" was the predominant type, especially in those sections where the influence of state banking has been greatest, it may be regarded as the starting point for the evolution of the present systems. Legislation is directed toward the cor-

rection of existing systems, and so the aim of the state laws may be comprehensively described as an attempt to amend "general incorporation laws" in those respects in which they have been found unsuited to the proper control of the banking business.

CHAPTER II

CAPITAL

The "general incorporation laws" have very elastic provisions as to the amount of capital required. The "general law" is designed to fill the needs of many classes of enterprises, varying widely in their needs for capital, and it has been the rule in the states to leave the size of the capital almost entirely to the discretion of the incorporators.¹ The special charter may be quite as liberal in its provisions with regard to capital as the "general law," but it is not likely to be so. No American legislature would be likely to grant a banking charter without requiring a capital, supposedly adequate to the needs of the corporation. Since the most glaring defect of the banks chartered under general acts was the absence, in many cases, of any proper capital, one reason may be seen why banking legislation has developed so much more rapidly in the West than in the South. While the system of special charters did not furnish sufficient safeguards for the banking business, it was in many respects, very much superior to the "general law," and especially was this true with respect to capital requirements.

As soon as the states began to pay attention to the regulation of the banking business, the question of bank capitalization received attention. The national bank act and the surviving antebellum laws in the Middle West had special requirements of this kind; in fact, some kind of capital requirement was recognized as the central point

¹ A large majority of the states require neither a minimum nor a maximum capital. In some, however, a small minimum, rarely exceeding \$1000, is required. The maximum permitted is generally so large as not to be a question of importance in banking charters.

in any regulation of banking. The capital stock is a buffer interposed between losses, which the bank may suffer, and the bank's creditors. If there is no capital, losses may fall directly on the creditor, and the larger the capital stock, other things being equal, the less the likelihood of loss to the depositor.² Wherever any state regulation of banking has been attempted it has been the universal rule to enact that banking corporations shall have a certain minimum capital.

Amount of Required Capital.—At the present time, only a few states, the remains of a large number, Arkansas, Mississippi, Tennessee, South Carolina, Oregon, Arizona, Idaho, Nevada, New Mexico, and Virginia, have no special requirements as to the capital of banking companies. In these states, so far as capital is concerned, banks are on the same footing as other corporations. The determination of the amount of capital needed, rests entirely with the persons seeking incorporation, except that the Virginia "general incorporation law" requires a capital of at least \$500.

The minimum capital requirement in the differentiated banking laws varies from \$100,000 to \$5000. These amounts have been determined in each state in one of three ways: (1) In the states which formerly had undifferentiated systems, banks generally established a minimum for themselves. For example, when California for the first time, in 1895, required a minimum, it was placed at \$25,000, because, while there were a few banks operating with a smaller capital, there was no large class of such banks, and it was thought that no great injury would be done by debarring them. In Nebraska, on the contrary, the law of 1889 fixed \$5000 as a minimum.³ This was a necessity, because there were many banks with no

² This is not meant as a statement of the economic position of the capital of a bank; it is the view which the state systems of regulation take of capital stock.

³ Laws of Nebraska (1889), chap. 37, sec. 1.

greater capital. Thus, these states have generally accepted a status established by economic conditions. (2) In those states which have passed from the use of special charters to differentiated laws, the minimum required has been about equal to the capital of the smallest banks formerly incorporated by special act. Here also the economic factor has dominated the situation. In both this and the first class, there has been little movement since the first placing of the minimum, and it is improbable that there will be any, unless changes should occur in economic conditions. (3) The minimum has been set in the last group in an entirely different way. As has been said before, certain states, in which "free banking" was most widely used before the war, retained their banking laws then in force, without lapsing into the use of "general incorporation laws." These states were Indiana, Illinois,⁴ Ohio, Iowa, Minnesota, Michigan, Wisconsin, New York, Vermont, and Louisiana. The minimum requirement in none of these states was less than \$25,000. In some of them, this has been lowered, but in others, it has remained rigidly at the same amount. As the need for small banks has sprung up, the old law has not changed so as to meet the situation fully. Probably the referendum provisions discussed above have given a fixity to the law in some states which it would not otherwise have possessed. There has also been undoubtedly a feeling against the incorporation of very small banks in some states. Evidence of the economic need for banks of small capital is afforded by the fact that in these states, and more especially in the ones having high minimum requirements, the number of private banks is very large.⁵ The antebellum policy was to

⁴ The case of Illinois has been somewhat exceptional. It alone of this group was able to use special charters, but only under the restriction of the referendum. Its present law, adopted in 1887 (Laws of Illinois, 1887, p. 89), followed the general trend of the Indiana law, which, passed in 1872-73, was practically the antebellum law remodelled. These states, while not strictly under the old law, are yet practically under its influence.

⁵ See p. 85.

give incorporation only to banks of issue, and it was believed that only banks of a certain size could properly perform that function. The question now is not whether small banks of discount and deposit shall exist—they are already in being. The point is whether there is any advantage in denying the right of incorporation to such institutions.⁶ In Michigan,⁷ Louisiana,⁸ Minnesota,⁹ and New York,¹⁰ the old capital provisions have been reduced to meet this demand.

There is a wide difference in the minimum required in the various states, and the variation is to a considerable degree a sectional one. In none of the New England and Eastern States can the capital be less than \$50,000, except in the case of New York. The \$25,000 group begins with this state, and includes New York, Ohio, Indiana, and Illinois. In the Middle States, except in the case of Missouri, where special charters prevailed, capital before 1865 was never less than \$25,000, and in Illinois and Michigan, it was \$50,000. Ohio and Indiana have never seen fit to lower this minimum, but in Illinois it has been reduced to \$25,000. This is still the nominal requirement in Wisconsin¹¹ and Iowa,¹² but in Wisconsin, since only \$15,000 need be paid in, the minimum is lower for all practical purposes; in Iowa, savings banks may be formed with a capital of only \$10,000. These banks, for the most part, carry on a commercial business. There has been an apparent reluctance to face the situation frankly, and state banks still seem connected in the legislative mind with note issue.¹³ Minnesota and Missouri require a capital of only

⁶ See on this point, p. 87.

⁷ Mich. (1887), Art. 205, sec. 1; also (1891), Feb. 26.

⁸ La. (1882), chap. 80.

⁹ Minn. (1887), chap. 63.

¹⁰ N. Y., (1874), chap. 126; (1882), chap. 409, sec. 29; (1892), chap. 689.

¹¹ Wisconsin (1861), chap. 242, sec. 14.

¹² Iowa, 15 G. A., chap. 60, secs. 2, 3.

¹³ The same thing was done in the period immediately after the war by Kansas and Missouri. Banks, to be known as savings banks, were chartered with a capital of \$50,000, but only ten per

\$10,000. Michigan until recently had a minimum of \$15,000. So that the more westerly and northern of the Middle States require minimum capitals ranging from ten to fifteen thousand. The more distinctively agricultural states in the western group have the lowest capital requirements to be found in any of the states. In Kansas, Nebraska, North Dakota, South Dakota and Oklahoma, banks may be incorporated with capitals as low as \$5000. The other states of the western group and the Pacific States do not permit, as a rule, a lower capitalization than \$25,000.¹⁴ In the South, the necessary capital is \$15,000 in Georgia, Kentucky and Alabama.¹⁵ In Louisiana, the minimum is still lower, being only \$10,000, while in West Virginia, capital may be as small as \$2,500, since only ten per cent is required to be paid in, the remainder being subject to the call of directors.

The United States may be divided, then, roughly into four great groups according to the capital which a bank must have in order to be incorporated under the state laws.

I. The New England and Eastern States, requiring, with the exception of New York, capitals of at least \$50,000.

II. New York, Indiana, Illinois and Ohio, the Pacific States and Territories, and the less distinctively agricultural of the Western States, requiring \$25,000.

III. The Middle States (except Indiana, Illinois and Ohio) and the Southern States, requiring \$15,000 or \$10,000.

cent of capital had to be paid in at once. This was a recognition of the needs of incorporation, but the old idea that banks of issue alone were to be incorporated, forced the states to meet needs by roundabout means. The "savings banks" in both states were really commercial banks. The names of many banks in Missouri still reflect this transitional period.

¹⁴ In Montana the minimum is \$20,000. By an act passed in 1890 (chap. 31), banks may be formed with a capital as low as \$10,000 in Wyoming.

¹⁵ In Georgia and Alabama the minimum capital is \$25,000, but only \$15,000 need be paid in.

IV. The distinctively agricultural states of the western group, requiring only \$5000.

The reason for the regulation of capital is, as has been said, that capital is regarded as a safety fund for the protection of the creditors; the larger the volume of business transacted by the bank, the greater the likelihood of a large loss. The attempt is made, therefore, to establish by law a relation between amount of business and capital. In the national bank act, the amount of capital required depends on the size of the place in which the bank is located. It is assumed that a bank in a place of 5000 inhabitants will be able to do a larger business than one in a smaller town. On account of the small size of the capital required in some states under the state laws, it has been thought expedient to carry this principle into minute details. Thus, in all the states with a \$5000 minimum, except Kansas,¹⁸ a regular scale, advancing by small sums, is prepared. For example, in Nebraska, towns with less than 1000 population may have state banks with a capital of \$5,000; less than 1500, \$10,000; less than 2000, \$15,000. The general tendency has been toward refinement in the capital scale. Before the beginning of the present movement toward the improvement of the state banking systems, it was usual, in states where capital of a fixed amount was required, to have only one specified sum for places of any size, and this is still the rule in most cases where the capital requirement is high. There is much less tendency to discriminate in capital requirements when \$50,000 or \$25,000 is the minimum. Vermont, New Jersey, Pennsylvania, Indiana, West Virginia and Ohio make no distinctions. A minimum capital is fixed, and it is the same for large and small towns. The refined scales have arisen in three ways: (1) The uniform requirement was found unsuited to the needs of the state, since it was not low enough, and instead of making a lower uniform minimum,

¹⁸ See below, p. 32.

banks were allowed to be formed with less capital in small places. This has been the case in Minnesota, Georgia, Michigan, Alabama, Louisiana and New York. (2) In some cases, in passing from the "general incorporation law" to a differentiated system, a very low uniform minimum was required, which was later found to be unsafe, and a differentiated scale adopted. This was the case in Oklahoma. (3) The "general incorporation law" having given rise to banks with capitals of varying size, the capital requirement, at the outset was graded according to population, as in California, Nebraska, North Dakota, South Dakota.

It is to be noted that the scales generally do not go very high. After the capital requirement reaches, in most states, \$25,000, and in some, \$50,000, no increase is made for larger towns. It is only in Kentucky, New York, California, Illinois, Michigan and Massachusetts that requirements go to \$100,000. As compared with the national system, the necessary capital is, generally, lower not only for small towns, but for places of any size. The gradation does not advance so rapidly, nor extend so far. The recognition of capital as a fund for the security of creditors did not figure often in our early banking history. The same idea, however, was the basis of the restriction of note issue according to capital. Looking, as the antebellum systems did, to the security of the note holder, it was natural that the capital should be considered a fund for their protection. These restrictions also served the purpose of keeping the note issue within bounds.

It is evident that regulation of capital according to the population of the place in which the bank is located is a very crude way of securing any proportion between capital and volume of business. The more elaborate the sliding scale is made, the more nearly on an average will an approximation be made to the desired result, but no scale can take into account differences in localities as to business, nor the more important question of competition. Even if towns of 1500 population had equal amounts of

business, it cannot be known among how many banks this is divided. So that if capital regulation is of any value, it seems worth while to secure a more regular proportion between capital and deposits than can be gotten by scales based on population. In this connection, the recent legislation in Kansas is worthy of notice. In 1897, the legislature being convinced of the utility of grading its capital requirement, which had previously been a uniform minimum of \$5000, made use of a new method of applying the principle that capital should be regulated according to business. It was enacted that the total investments of any bank, exclusive of United States bonds, should not exceed four times the capital and surplus actually paid in.¹⁷ The purpose and operation of this clause is thus described by the Kansas Bank Commissioner.¹⁸ "One provision, which produced the greatest opposition, was the section which limited the total investments of every bank to four times its capital and surplus. The theory upon which the adoption of this section was urged, was that a bank's capital should bear some proper proportion to the volume of business transacted by it; and there being no possible way by which the amount of deposits could be restricted, the idea of restricting the investments appeared to be, not only possible, but wise. It was argued, in support of the proposition, that it would result in an increase in the capital of small banks, thereby giving greater protection to depositors; that it would not be a difficult matter to procure additional capital when, for each thousand dollars thus invested, the bank could invest four thousand dollars, and above all, that banks should be content with receiving an income on four dollars for every dollar invested. The operation of this section has resulted in nearly one hundred banks increasing either their capital or surplus. Many have carried their entire earnings to

¹⁷ Laws of Kansas (1897), chap. 47, sec. 9.

¹⁸ Report of Bank Commissioner, 1897-98, p. VIII.

surplus, thereby adding to the strength of the bank and the security of depositors."

It has been contended by an eminent authority that such legislation is of no value, being based on "a conjectured average too rough to be of service in any individual case," and that, "in this respect, as in so many others, the judgment of the persons most interested, acting under the law of self-preservation, is far more trustworthy than any legislative decision."¹⁹ There seems, however, a general consensus of legislative opinion that some form of regulation of capital is necessary. The theory on which the state and national systems of bank regulation rest is that it is proper to prescribe those things which persons would do if they acted with good judgment. The majority of bankers would lay by a surplus fund if there were no legal requirement, but it is none the less expedient to force others to do likewise. It is also to be noted that with regard to the size of capital, the interest of the banker runs counter to the protection of the depositor. The larger the business which can be built on a capital, the greater will be the dividends earned. The banking laws are built on averages; if prescribing a certain capital will cause men, who otherwise would not, to make business and capital more closely correspond, and if this is desirable and can be accomplished without any ill effects, it seems a proper addition to the banking laws.

There is one consideration, however, which deserves attention. Under the operation of the sliding scale, what might be termed a "capitalistic monopoly" is created. For example, in a town of 2000 people, if the capital required is \$50,000, there would probably be one bank only, since there is not enough business to justify dividends on two such capitals, and no smaller bank can be started. Under the Kansas system, another bank could be organized with \$5000, and as its business increased, its capital

¹⁹ Dunbar, "Theory and History of Banking," p. 21.

would grow. Evidently, competition is made freer, but it is doubtful if this is beneficial. While competition should be allowed, the economies of larger institutions ought to be preserved. The one bank would serve the people more cheaply in all probability than several smaller ones. It would appear then that a sliding scale is of importance, and should be supplemented, and not supplanted, by the Kansas method. It is necessary, of course, in any application of the Kansas law, that sufficient encouragement should be given to individual enterprise. If the capital requirement is heavy, the incentive to build up business will be reduced and deposits which might be secured, will not be obtained. To restrict investments to four times the capital and surplus is, however, not a hardship. The national banks, on the average, do not do nearly so profitable a business. In 1899, their investments were only about three times their capital and surplus.

Payment of Capital.—Under "general incorporation laws," there may be a wide difference between nominal and paid-up capital. The amount of the variance is left to the discretion of the directors, who have power to require the payment of the remainder of capital at such times as they think proper.²⁰ As long as banks were allowed to be incorporated under the general law, it was possible for the authorized capital to be largely in excess of the sum actually paid in. It is assumed that persons having dealings with corporations will be able to ascertain the real capital; but the depositor in a bank stands on a different footing. As a general rule, he is unable to distinguish between the nominal and the authorized capital. He gives credit frequently on the basis of the published capital, and it has been thought expedient that there should be no possibility of deception in the matter. The working of a law undifferentiated in this respect has been forcibly de-

²⁰ In some states part of the capital must be paid in, *e. g.*, in Vermont, one-half; a number of states require ten per cent, but in the great majority, no sum is fixed.

scribed by the California Bank Commissioners as follows: "Licenses to conduct the business of banking have been demanded and received under the law, the Commissioners being powerless to refuse them, when the amount of capital stock paid up was merely nominal, in fact, infinitesimal, and these concerns most loudly proclaim their authorized capital."²¹

Again, if capital is regarded as a fund for the security of depositors, it is absolutely necessary that the capital should be paid up, or the purpose of the law is defeated. As has already been pointed out, in certain states the capital requirements are considerably affected by the provisions for payment. It is useless to prescribe a minimum capital, unless some provision is made to secure payment.²² The case of West Virginia is in point; nominally the minimum capital is \$25,000,²³ but practically, the law is entirely undifferentiated in this respect. Only ten per cent need be paid in before the certificate of incorporation is issued, and the remainder is subject to the call of directors. These conditions are the same as those prescribed under the "general law" for ordinary corporations.

The national banking act has been the most powerful influence in determining the form of the state legislation designed to amend this evil. In the following states, fifty per cent must be paid in before beginning business, and the remainder in a specified time, ranging from five months to two years: Pennsylvania, South Dakota, Missouri, California, Oklahoma, Wyoming, Colorado, North Dakota, Massachusetts, Florida, Kentucky, Indiana, Michigan.²⁴ In the most recent legislation, a tendency to

²¹ Twelfth Annual Report of Banking Commissioners of California.

²² Such provisions may be of importance, however, in another way. See page 58.

²³ Laws of West Virginia (1872), chap. 215.

²⁴ Slight variations from this rule are Ohio, 60 per cent; Utah, 25 per cent, remainder in one year; Washington, three-fifths.

go somewhat farther in stringency has manifested itself, and in Maryland, New York, Iowa, Montana, Vermont, Minnesota, Nebraska, Illinois, New Jersey and Kansas the entire capital must be paid up before any business can be transacted by the corporation. In Georgia and Wisconsin, specified sums must be paid in, irrespective of the size of the capital. The remaining states are less rigid in their requirements. In those enumerated above as not requiring a minimum amount of capital, there are naturally no provisions for payment. It is quite conceivable, however, that a state, which has no minimum capital requirement, might yet endeavor to have authorized and real capital correspond in order that the depositor might not be deceived by a fictitious capital, but as the first step usually taken by a state in bank regulation is the fixing of a capital minimum, no such attempt has been made in any of the states.

The only good reasons for allowing any part of the capital to remain unpaid are: (1) That the bank cannot use all of its capital conveniently at first; (2) The convenience of the shareholders in paying by installments. Any provisions allowing a greater time than is required by these considerations are to be condemned as likely to lead to evils.

Impairment of Capital.—Having secured the payment of a capital considered requisite for the business, it is necessary to provide that the amount paid in shall not be impaired in any way except by a decrease of stock, which shall not be so great as to reduce capital below the legal minimum. There are two ways in which capital may be impaired: (1) By payment of unearned dividends; (2) By losses being greater than profits.

Under the "general incorporation law," it is the usual rule that dividends are to be paid only from earnings, but in providing a safeguard, the states may be divided into two great classes: (1) Those imposing a liability on directors for dividends which impair capital; (2) States

which make directors responsible only when dividends impair the capital to such an extent as to make the assets less than the liabilities of the corporation. The second class of states is by far the more numerous, and in them there is no restriction on the payment of dividends so long as the assets exceed liabilities. It is difficult in the case of the ordinary corporation to ascertain whether dividends are paid from capital or earnings, since such a calculation depends on the valuation of property. In the case of a bank, property is almost entirely in the form of debts due the bank, and the value of such assets is easier to estimate.²⁵

Before the enactment of the national banking act, it had become a well-settled rule in state legislation that dividends could only be paid when the net profits of the bank exceeded its losses, and that if capital was impaired by losses, no dividends should be paid until the capital was restored to its proper amount.²⁶ The same principle has been recognized in the state banking systems since 1864. Even in most of the states where the "general incorporation law" does not restrain impairment of capital, it has been recognized that banks should be regulated differently in this respect.

The national law in its original form did not provide any better method of keeping capital up to its full value. It was not until 1873, that the Comptroller of the Currency received power to order the directors to assess shareholders when capital was impaired.²⁷ Previous to that time, the only remedy was to wait until profits made up

²⁵ According to nearly all the state laws, debts unpaid for a certain length of time are not to be considered in estimating a bank's assets for the purpose of finding net profits.

²⁶ See, for example, New York (1838), chap. 260, No. 28; Wis. (1852), chap. 479, sec. 40; Minn. (1866), chap. XXXIII, No. 31; Ohio (1851), 49, v. 41, sec. 22; Ind. (1855), p. 23. If dividends were made, any person in interest might apply to the courts for a receiver.

²⁷ Sec. 5205, Revised Statutes of U. S.

for losses. In the state systems, the simple prohibition of dividends in case of impairment of capital was not adequate to the necessities of the case, but in nearly all the legislation it was the only remedy available, until within a comparatively recent period. Before any method of assessment could be put in force, it was necessary that there should be a satisfactory system of examinations, and in some cases, even after this has been provided for, there has been a slowness in giving the officials such summary powers.²⁸ In most of the states where inspection is thorough, this power has been given to the heads of the state banking systems. As soon as examinations were regularly made, it was found that in many cases the capital of banks was grossly impaired,²⁹ and it was urged that a summary remedy be provided for this evil. In general, legislation has followed the lines of the national bank act as amended, and the state officials have been given authority to order directors to make an assessment, and if this is not done, to apply for a receiver for the bank. This is the provision of the law in New York,³⁰ Michigan,³¹ Oklahoma,³² Missouri,³³ Kansas,³⁴ Nebraska,³⁵ Pennsylvania,³⁶ Minnesota,³⁷ Georgia,³⁸ Florida³⁹ and Indiana.⁴⁰ In Illinois, the State Auditor, himself, assesses and collects the sum necessary to restore capital.⁴¹ By the Iowa law if the directors of a bank do not assess on the order of the State Auditor, they are themselves responsible for any

²⁸ See for further discussion of this point, "Supervision."

²⁹ For example, see "Report of Bank Examinations in Missouri," 1897.

³⁰ N. Y. (1890), chap. 429.

³¹ Mich. (1889), chap. 205, sec. 42.

³² Okla. (1899), chap. 4, sec. 43.

³³ Mo. (1895), p. 97.

³⁴ Kans. (1897), chap. 47, sec. 20.

³⁵ Neb. (1889), chap. 37, sec. 13.

³⁶ Pa., Feb. (1895), sec. 6, P. L. 4.

³⁷ Minn. (1895), chap. 145, sec. 19.

³⁸ Fla. (1889), chap. 3864, sec. 34.

³⁹ Ind. (1895), p. 205.

⁴⁰ Ga. (1895), p. 58.

⁴¹ Ill. (1887), p. 90.

losses.⁴² The Wisconsin law simply provides for the publication of the fact in a local newspaper, if any impairment is not made good.⁴³ In the other states, the only way by which losses must be made good is by the accumulation of profits.

⁴² Iowa, 25 G. A., chap. 29, sec. 2. The power is given by the code revision of 1897 to apply for a receiver if the directors do not comply. Code of Iowa, sec. 1877.

⁴³ Wisconsin (1895), chap. 291, sec. 11. The law of 1897, passed by the legislature, but rejected by a popular vote, gave the Examiner the right to apply for a receiver.

CHAPTER III

SUPERVISION

As it has become necessary to differentiate banks from other corporations in the matter of capital, there has also arisen a need for supervision, partly to insure that capital requirements are observed; partly that other regulations peculiar to the business of banking are obeyed. Thus, while supervision may be considered, in itself, a differentiation of the "general incorporation law," it is set up in order that other differentiations may be effectively carried out.¹ As long as banking was on the same footing as other lines of business, supervision was rarely exercised.

In its highest form of development, supervision includes adequate means of ascertaining whether the law is complied with, together with the bestowal of power on some state official to act when violations occur. In reaching a conclusion as to whether a bank is obeying the law, two means are used: (1) Reports under oath are to be made at intervals by the bank's officers; (2) Examinations are made from time to time by state officials. The only form of supervision widely in use in the states until the beginning of the present movement, was the requirement of reports. In many of the states, the antebellum laws had imposed on banking corporations the duty of making reports of condition, and this legislation, for the most part, has remained in force during the whole period since the passage of the national bank act. Thus, in 1873, when the Comptroller of the Currency first began to pub-

¹ California is unique in this respect. Its system of supervision was originally imposed on a general incorporation law. Gradually, however, a considerable degree of differentiation has been brought about.

lish statistics of state banks, reports were made in nearly all of the New England, Eastern and Middle States.

An examination of the table on page 49 will show the improvement since that time in this respect. It will be seen that in some cases, laws have been passed requiring reports but making no provision for examinations. Of this character, are the laws of Mississippi,² Colorado,³ Washington⁴ and Kentucky.⁵ This was the status of supervision in a large number of states prior to 1887, and it may be considered as the first stage in the evolution of the present systems. Banks were usually required to publish these reports in some local newspaper, and thus a certain amount of what may be styled "public supervision" was attained.⁶ When used alone, however, reports furnish an inadequate basis for an efficient system of regulation. In the years preceding 1887, in the majority of the states, reports were made on fixed days, and generally, not more than once a year.⁷ Since the report has become a real means of supervision, its character has changed; it is now made more frequently, and on days set by the state officials, and not known in advance by the bank's officers. So that there has been a rapid increase both in the number of states requiring reports, and an equally important advance in their efficiency.

Bank examination has been always somewhat later than

² Miss. (1888), p. 29.

³ Col. (1877), Sec. 243.

⁴ Wash. (1886), p. 84.

⁵ Ky. (1893), chap. 171. The Secretary of State may require reserve to be made good, but evidently such a power can seldom be exercised simply on the basis of a report.

⁶ In Tennessee, while banks make no reports to state officials, they must publish statements of condition in a local newspaper. Tenn. (1875), chap. 142, sec. 17.

⁷ A considerable part of this kind of legislation has had the aim of securing statistical information. The Comptroller of the Currency, at various times, has urged on the state governments the expediency of requiring reports (see Report of the Comptroller of Currency, 1879, p. 59), and it was in compliance with his request that the greater part of the legislation prior to 1887 was enacted.

reports in making its appearance as a means of supervision. Even at the close of the Civil War, it was only in the New England States that banks were regularly examined by state officials.⁸ In the other states, examinations were made only when there was reason to suspect improper management, or on application of stockholders or creditors. The development of legislation on this subject in New York may serve as a type of that in the other states. Under the provisions of the Safety Fund Act, the Commissioners were to examine each bank quarterly;⁹ the "free banks," however, were not subject to this requirement, and were only examined by order of the Chancellor on application of persons interested.¹⁰ During the years 1842-1843, all banks were under the supervision of the Safety Fund Commissioners,¹¹ but in 1843, their office was abolished, and the Comptroller placed in charge of banks.¹² He was not empowered, however, to examine them, unless he suspected their solvency, and it was not until 1884, that examinations were required to be regularly made. The first attempts at supervisory legislation after the Civil War generally followed the precedent set by the laws already in existence. Thus, in Virginia,¹³ Florida,¹⁴ New Mexico,¹⁵ and North Carolina,¹⁶ the examinations were to be made only on application, or when some state official considered the bank unsafe. The only laws passed prior to 1887 which provided for regular examinations were those of New York,¹⁷ Indiana,¹⁸ Minnesota,¹⁹ and California.²⁰ Since

⁸ Rhode Island was an exception, following the Eastern and Middle states in this respect.

⁹ New York (1829), chap. 94, sec. 5.

¹⁰ New York (1838), chap. 260, sec. 25.

¹¹ New York (1841), chap. 363.

¹² New York (1843), chap. 218, sec. 6.

¹³ Va. (1884), chap. 198, sec. 1.

¹⁴ Fla. (1868), chap. 1640, sec. 12.

¹⁵ N. M. (1884), chap. 36, sec. 7.

¹⁶ N. C. (1887), chap. 175.

¹⁷ N. Y. (1882), chap. 409, sec. 12.

¹⁸ Ind. (1873), chap. VIII, sec. 18.

¹⁹ Minn. (1878), chap. 84, sec. 14.

²⁰ Cal. (1878), p. 840.

then, the movement has been rapid, until at present, regular examinations are made in all the states, except Delaware, Virginia, South Carolina, Mississippi, Alabama, Arkansas, Tennessee, Kentucky, Ohio, Colorado, New Mexico, Washington, Oregon, Idaho and Nevada. It will be noticed that nearly all these states permit banks to be formed under the "general incorporation law." Ohio, Colorado, Alabama, Washington and Kentucky are the only ones in the list requiring a specified capital for the formation of banking corporations. On the other hand, Arizona is the only one of the states and territories incorporating banks under a general law which has regular examinations, and no capital requirements.

The influence of the adoption of a system of supervision on the banking laws is marked. While the purpose of supervision is to carry into effect laws which without it would be inoperative, when once put into operation, it becomes itself an active force in promoting new legislation. Examinations soon disclose evils which the law does not deal with, or for which the remedy provided is inadequate. New legislation is asked for, and usually granted by the legislatures.

There are, then, fifteen states and territories in which there are no provisions for the examination of state banks. This statement gives, however, an erroneous impression of the extent to which state banking is unsupervised, since the number of banks in these states is somewhat below the average. Of 4200 banks incorporated under state laws, in operation in 1899, nearly 3100 were regularly examined by state officials, so that while only about two-thirds of the states provide for supervision, the number of banks in those states is three-fourths of all the state banks in existence. In recent years, the extension of supervision has been much faster than the growth in numbers: in 1887 there were 1526 state banks in all the states and territories, and only 341 were subject to regular examinations. While state banks since that time have nearly

trebled in numbers, about nine times as many banks are now under effective supervision as there were then.

An examination of the list of states making no provision for periodical examinations, will show that they fall into two groups: (1) The states and territories in which settlement is very recent, and especially those in which mining and stock raising are more important than agriculture; (2) A considerable number of the Southern States. Delaware and Ohio are exceptions, falling in neither class. In the former group the number of banks is as yet small, and the matter has not been deemed of importance. On the contrary, there are in the South, a large number of state banks. Of the 1100 banks which are not examined, over 800 are located in this section. The reason for the backwardness of Southern banking legislation in this respect is not to be found in any peculiarities of the banking systems in these states, although it is possible that the use of special charters continuing there later than elsewhere may have somewhat retarded the development of systems of supervision. That this cannot be the fundamental cause is shown by the fact that both North Carolina and Georgia began the examination of banks while using special acts of incorporation. Also some states, such as Mississippi and Arkansas, which have had the general act as the exclusive means of incorporation for a considerable time, have not yet developed any effective supervision. A truer explanation would probably be found in the general legislative tendencies of the Southern people. In no section of the country has there been less control of private business by the state governments than in the South. The policy of *laissez faire* has been, until recently, consistently pursued. There are signs, however, that a movement toward bank supervision is in progress. The constitution of South Carolina adopted in 1895,²¹ and the Louisiana

²¹ Art. IX, sec. 9; also laws of 1896, No. 48. For some reason, however, this law has been inoperative, and there is as yet no bank examination in South Carolina.

constitution of 1898,²² both provide for the appointment of state examiners.

In the method of paying bank examiners for their services, the state laws have made a noteworthy improvement upon the national system. A national bank examiner is paid entirely by fees.²³ In his report for 1887,²⁴ the Comptroller of the Currency said, "From many points of view, it would be expedient for the examiners to be paid out of the tax on national banks, and not by fees. The present system establishes relations between the bank and the examiner which are inconsistent with the functions of that officer, and with what ought to be his attitude toward the bank." Furthermore, under the fee system it is to the interest of the examiner to make his inspection as rapidly as possible, since the amount of his earnings depends on the number of banks he examines. Various methods have been used in the different states to overcome this defect in the national bank act. The most common has been to require the banks to pay fees to the state treasury, and examiners are paid an annual salary. This is the case in Michigan,²⁵ Oklahoma,²⁶ Wisconsin,²⁷ North Dakota,²⁸ Missouri,²⁹ and Minnesota.³⁰ In other states, the expenses of supervision are assessed on banks, usually in proportion to capital or deposits. This method is followed in New York,³¹ California,³² and Georgia.³³ The examiners are regarded as state officials, and are paid by salary, but it is considered proper that the banks should pay all or part

²² Art. 194; also laws of 1898, Art. 198.

²³ Revised Statutes of the U. S., sec. 5240.

²⁴ Page 9. See also to same effect, Report of Comptroller of Currency, 1900, Vol. I, p. xxvii.

²⁵ Michigan (1887), Art. 205, sec. 40.

²⁶ Oklahoma (1899), chap. 4, secs. 25, 26.

²⁷ Wisconsin (1891), chap. 295, sec. 7.

²⁸ North Dakota (1893), chap. 23.

²⁹ Missouri (1897), p. 83.

³⁰ Minnesota (1893), chap. 41, secs. 1, 2.

³¹ New York (1882), chap. 409.

³² California (1878), p. 740.

³³ Georgia (1889), p. 65.

of the expenses. There are some states, usually those in which banks are few, where some state officer having other and more important duties is charged with bank supervision, and no fee is imposed on the banks, the state paying all expenses. It may be said in general that nearly all the states in one way or another have avoided the evils of the fee system.

If then, by examinations or reports, it is disclosed that the bank has an impaired capital, is violating the laws, or is insolvent, what power is given to state officials to take action? It is usually required that notice shall be given, but if this proves ineffective, the proceedings for insolvency must be taken. It is here that a radical difference appears between the state and national systems. Under the state laws, the courts must be applied to for the appointment of a receiver,³⁴ while the Comptroller of the Currency has power, without the intervention of judicial procedure, himself to appoint a receiver, who acts under his direction. The final power, then, to regulate state banks rests with the law courts, while national banks are under the control of the Comptroller. The one is a judicial, while the other is an administrative system. Receivers for all other corporations are judicial officers, and the legislatures of the states have been unwilling to distinguish, in this respect, banking from other corporations. Before the passage of the national bank act, the appointment of bank receivers in all the states was in the hands of the courts. The conditions surrounding the national act, made it necessary to

³⁴ The state official is not always authorized to apply for a receiver. In Wisconsin and Louisiana, publicity is relied on; the bank continues, but the people are warned by publication of its condition. The Bank Examiner of West Virginia reports to the Board of Public Works, which has power to revoke the bank's charter. The State Examiner of South Dakota simply reports to the Governor. Of course, in those states where there is no supervision, action must be taken by the individuals concerned as in the case of the ordinary corporation.

give this power to the Comptroller.³⁵ The matter passed from the courts. In the national system, the decision of the Comptroller is final and no room is left for a contest on the part of the bank.

As soon as state supervision became well organized, it was seen that the appointment of receivers by the courts failed to cover the needs of the case in one important particular. In the time which must necessarily elapse before action could be taken by a judge, assets were frequently misapplied by the directors. Arrangements were entered into which seriously diminished the fund from which depositors were to be paid. In order to prevent such a dispersion of the assets, under the antebellum systems it was usually made the duty of some state official to secure an injunction forbidding the bank to carry on business or to transfer its assets.³⁶ To secure an injunction requires time, and speedy action is desirable. This would, however, without any doubt, have been the direction which the

³⁵ It is of interest to note that the cases in which the Comptroller may appoint receivers have been steadily increased. Originally, it was only when a bank defaulted on its notes that he could take charge of it. In 1870, he was authorized to appoint receivers for banks with impaired capital, and it was not until 1876 that his power was extended to cover cases of insolvency. Even at the present time, violations of some provisions of the national bank act can only be punished by a resort to the courts for a dissolution of the corporation.

³⁶ The New Jersey act of 1889 for bank examination follows the old method, and may be taken as an example. It runs: "Whenever it shall appear as the result of examination that the affairs of any such corporation are in an unsound condition . . . or that it is transacting business . . . in violation of law, it shall be the duty of the Attorney-General, on notice by the Commissioners, to apply forthwith, by petition or bill of complaint or information, to the chancellor for an injunction restraining such corporation from the transaction of further business, or the transfer of any portion of its assets in any manner whatsoever, and for such other relief and assistance as may be appropriate to the case; and the chancellor being satisfied of the sufficiency of such application, or that the interests of the people so require, may order an injunction, and make other appropriate orders in a summary way." N. J. (1889), p. 368, chap. CCXXXIV.

state legislation would have taken, if it had not been for the example of the national bank act. The plan actually adopted has been to confer on state officials the power to take charge of a bank immediately, and hold its assets until a receiver is appointed, or the application refused. This authority, in most cases, has been given somewhat later than the power to apply for a receiver, and may be considered a movement in the direction of a more highly administrative system.³⁷ Many states, however, have never taken this step.³⁸

³⁷ In some states there is a slight control over receivers by the state bank officials. In Michigan, dividends are distributed under the order of the State Bank Commissioners, and insolvent banks, in a few states, are examined periodically, but it may be said in general that the administration of assets is an exclusively judicial duty. Even statistics of insolvent banks are printed in only a few of the state reports.

³⁸ The following table shows for each state the present stage and the development of its supervision.

TABLE SHOWING GROWTH AND PRESENT STATUS OF STATE BANK SUPERVISION.

	Regular Reports begun	Regular Examinations begun	Power conferred on State officials to apply for a receiver	Power conferred on State officials to take possession of bank pending appointment of a receiver
Maine.....	Ante bellum	Ante bellum	Ante bellum	
N. H.....	" "	" "	" "	
Vt.....	" "	" "	" "	
Mass.....	" "	" "	" "	
R. I.....	" "		" "	
Conn.....	" "	Ante bellum	" "	
N. Y.....	" "	1884	" "	1892
N. J.....	" "	1889	1889	1899
Del.....	" "			
Md.....	1870	1898	1898	1898
Pa.....	Ante bellum	1891	1891	1895
Va.....	1884			
W. Va.....	1891	1891		
N. C.....	1887	1889	1891	
S. C.....				
Ga.....	1889	1889	1895	
Ala.....				
La.....	1882	1898		
Fla.....	1869	1897	1889	
Miss.....	1888			
Tex.....				
Ark.....				
Tenn.....				
Ky.....	1870			
Ohio.....	Ante bellum			
Ind.....	" "	1873	1895	1895
Ill.....	" "	1887	1887	1887
Mich.....	" "	1887	1887	1893
Wis.....	" "	1895		
Ia.....	" "	1891	Ante bellum	1897
Minn.....	" "	1878	1889	1889
Mo.....	1877	1895	1895	1895
Kan.....	1891	1891	1891	1891
Neb.....	1877	1889	1889	1895
N. D.....	1890	1890	1893	1893
S. D.....	1891	1891		
Okla.....	1897	1897	1897	1897
Mon.....	1887	1895	1899	1899
Wyo.....	1888	1888	1895	1895
Col.....	1877			
N. M.....	1884			
Wash.....	1885			
Or.....				
Cal.....	1878	1878	1878	1895
Ida.....				
Utah.....	1888			
Nev.....				
Ariz.....	1893	1893	1893	

CHAPTER IV

REAL ESTATE LOANS

There is no more characteristic difference between the state and the national banking laws than the fact that almost without exception, state banks may loan on real estate security, while national banks are prohibited from doing so.¹ In the antebellum state laws, in only a few cases were the banks forbidden to loan money on landed property. As long as banks were chartered under the "general incorporation law," they had power to make loans on every form of security, and in the transition to a differentiated law, the legislatures of the various states have still allowed the same freedom.² In some cases, where the influence of the national act has been strong enough at the outset of state bank regulation to secure the insertion of the prohibition against real estate loans, it has later been found desirable, after some experience, to amend the law in this respect.³

While there has been no long-continued tendency in the state legislation to follow the national bank act in its prohibition of real estate loans, there has been, in a few states, a movement toward placing a limit on the amount of such investments. The law recognizes the propriety and safety of such business, but also endeavors to keep it within bounds. Thus, by the South Carolina law, not more than one-half of the capital and surplus may be loaned on mortgages of real estate.⁴ Similar restrictions are imposed by

¹ Revised Statutes of the United States, sec. 5137.

² The only exceptions are Oklahoma and Ohio.

³ North Dakota (1899), chap. 28; South Dakota (1893), chap. 23.

⁴ South Carolina (1887), No. 427.

the laws of North Dakota,⁵ South Dakota,⁶ and Michigan.⁷ The most elaborate provision on the subject is that contained in the defeated Wisconsin act of 1897, in which it was enacted that "no bank should lend to an amount exceeding twenty per cent of its capital stock upon mortgages or any other form of real estate security, except on the adoption of a resolution by a two-third's vote of the board of directors, specifying some larger amount which its officers might loan upon real estate security; provided that in no event should any bank so loan an amount to exceed twenty-five per cent of its capital, surplus, and deposits, and provided that banks doing business in villages or cities having less than six thousand inhabitants under the last official census, might loan a sum not to exceed thirty-three and one-third per cent of the aggregate of its capital, surplus and deposits upon real estate security."⁸ With the exception of these states, and of those in which real estate loans are entirely prohibited, the amount of such investments is left entirely to the discretion of the officers of state banks.

Real estate security, as a basis for bank loans, has been quite generally condemned by writers on the subject of banking. Mr. Horace White says, "The reason why lands and buildings ought not to form the basis of the loans of a commercial bank is that they are not quick assets. The liabilities of the bank being payable on demand, the assets must be converted into money within short periods. When

⁵ North Dakota (1899), chap. 28.

⁶ South Dakota (1893), chap. 23.

⁷ Michigan (1887), Art. 205, sec. 23. Under the provisions of the Michigan law, no real estate loans can be made until a resolution stating the extent to which such loans may be made has been passed by a two-thirds vote of the directors. The amount must in no case be more than fifty per cent of the capital of the bank.

⁸ Wisconsin (1897), chap. 303, II, sec. 23. This law was strenuously opposed in some quarters on the ground that it did not provide sufficiently for real estate loans, and it was largely owing to this feeling that it was defeated by the popular vote. (Fifth Annual Report of the Bank Examiner of Michigan, p. IX.)

real property is given as security for a debt, both borrower and lender look to it, and not to the personal obligation, as the source of payment."⁹ It will be seen that this theory is predicated on the assumption that the deposits are demand liabilities, but it is one of the salient features of state banking that a large part of the deposits are time liabilities. It is not possible to ascertain for all the states what proportion time deposits bear to those payable on demand, but the following table shows the relation in a few typical states:

		Demand Deposits.	Time Deposits. ¹⁰
Wisconsin (1899)	Dec. 2,	\$19,803,760.83	\$23,874,040.77
Louisiana (1899)	Dec. 31,	12,280,772.58	4,092,688.59
Kansas (1898)	July 14,	19,553,081.17	2,841,875.14
N. Carolina (1898)	Sep. 20,	3,822,990.44	389,560.88
Missouri (1899)	Aug. 22,	62,980,924.93	15,469,496.03
Mississippi (1899)	June 30,	9,031,982.28	797,100.12
New Jersey (1899)	Dec. 2,	8,711,107.52	39,044.83
Indiana (1897)	Oct. 20,	9,848,669.15	1,060,933.70
Illinois (1899)	Dec. 4,	94,223,716.40	12,969,561.30

In the development of a community, there is a period when the functions of a savings bank and of a commercial bank are united in one institution, which has time liabilities, as well as demand deposits. In an agricultural section, these functions continue united, and the bank is a place of investment for a portion of its patrons. It seems perfectly safe that such a bank should have power to loan on real estate security. As industrial life develops, differentiation sets in, and two kinds of banks emerge—savings or investment banks,¹¹ and banks of discount and deposit.

⁹ "Money and Banking," p. 409.

¹⁰ Savings deposits are excluded wherever possible from these figures, and only deposits on time certificates included.

¹¹ Time deposits are usually made in large sums, and so differ from savings deposits, which are generally accumulated by degrees, but their fundamental similarity for the purposes of this discussion, consists in the fact that both kinds are regarded as investments, and consequently, are not demand liabilities.

It will be noticed in the preceding table that the state banks in New Jersey have practically no time deposits. In other words, the separation of the two classes is complete in that state.

The national banking act was not designed to fill the needs of the country for banks of discount and deposit, except in so far as those needs might be incidentally filled by banks primarily intended as a means of note issue. It was supposed that banks with \$50,000 capital would be located in places where they would have no considerable amount of time or savings deposits, and it was for such banks that the prohibition against real estate loans was designed.¹²

Other things being equal, the larger the town, the more complete is the separation of savings and commercial banks,¹³ and consequently, the less ought to be the investment in real estate securities. This is the principle adopted in the Wisconsin act of 1897 mentioned above, and it undoubtedly ought to form the basis for any legislation as to the amount of real estate investments which a bank may make. There is reason, however, to believe that self-interest will effect this without legislation. In smaller places, real estate loans yield as high a rate of interest as any other investment, but in cities, the rate of interest obtained on commercial loans is higher than that which can be gotten by loans on land, and consequently, banks will lend on personal and collateral security by preference. An interesting analysis recently made by the Bank Examiner of Wisconsin shows that the matter thus works itself out. He says, "A classification of the loans and discounts indi-

¹² There is a growing disposition to regard a reasonable amount of real estate loans as safe for a bank carrying only demand deposits. In most cases, a mortgage, if well secured, is quite as convertible as are stocks and bonds, on the security of which all national banks freely loan. See, for recent discussion, *Banker's Magazine*, Vol. 54, page 12 (editorial).

¹³ In several states in the Middle West, even in the largest cities, the banks retain this composite character. See Appendix, p. 112.

cates that \$31,012,220.37, or 77 and 98-100 per cent of this class of assets, consists of paper with or without other personal security, and \$8,749,881.51, or 22 and 1-10 per cent, on mortgage or other real estate security. By a further classification of the real estate loans, it may be noted that in cities of more than six thousand inhabitants, real estate loans constitute 8 and 26-100 per cent, and in towns and cities of less than six thousand inhabitants, 19 and 91-100 per cent of the aggregate capital, surplus, and deposits."¹⁴ Likewise, the real estate loans made by state commercial banks in San Francisco are only 11 per cent of the total loans and discounts, while in the state banks outside San Francisco, they are over one-third.¹⁵

There seems, on the whole, no disposition on the part of state banks to lock up any large part of their funds in real estate securities. Unfortunately, such investments are not separately classified in many of the state bank reports, but the following statistics are probably typical:

	Real Estate Loans.	All other Loans.
California (1899) July 31,	\$19,131,453	\$56,395,709
Kansas (1899) Dec. 2,	1,002,360	18,214,679
Missouri (1899) April 5,	6,396,005	62,310,630
Louisiana (1900), June 30,	1,832,688	9,005,621
N. Carolina (1899) June 30,	713,353	4,087,320

There may, however, be individual cases where the directors of a bank will exceed reasonable limits in this respect, and it would appear to be in accordance with the general theory of bank regulation that the amount of such loans should be limited.

The power to lend on real estate is profitable to the state banks. In many communities, there is not enough commercial paper to employ the banking capital, and if banks are restricted to that form of investment, a large portion

¹⁴ Fifth Annual Report of the Wisconsin Bank Examiner (1899), p. IX.

¹⁵ Report of California Bank Commissioners, 1899.

of banking funds would lie idle, and just so much revenue would be lost to the banks. There is reason to believe that the national banks in the South and West, although located mostly in the larger places, labor under this disadvantage. According to the report of the Comptroller of the Currency for 1899, reserves were held at various dates as follows:

	Feb. 4.	Apr. 5.	June 30.	Sep. 7.
Central Reserve Cities,	28.9	26.4	25.7	25
Other Reserve Cities,	36.5	33.5	31.6	30.3
Country Banks				
New England States,	31.7	30	27.4	27.9
Eastern States,	31.4	30.3	28.6	29.3
Southern States,	35.9	34.9	32.4	30
Middle States,	35.5	33.9	33.8	33.9
Western States,	37.4	37.7	40.4	40
Pacific States,	36.0	38.0	38.4	39.0

The theory on which the national law rests is that reserve and central reserve cities should carry larger reserves than country banks, while as a matter of fact in the greater part of the United States, the contrary is the case. The Western states deserve especial attention in this connection. In this group there are many national banks in the smaller towns, and it is here that reserves reach the abnormal height of forty per cent. It is not to be supposed that the average of a number of banks will show a reserve anything like so low as the legal minimum, but it is evident that when New England banks can use their funds so that they only keep about thirty per cent of reserves, while banks in the West must keep forty per cent, there are important differences in the loans which can be made in the two sections. Very large reserves are by no means desirable. They are a standing temptation to unsound banking; they increase the cost of banking and consequently tend to keep the interest rate high. If the revenue of the banks is diminished, the rate paid by borrowers

must, in the long run, be high enough to make up for that loss.

It would be of interest to know for what length of time loans on real estate security are usually made by the banks. No statistical data bearing on this point can be obtained, but there is reason for believing that a large part of such loans are for a year or more. There is a great need in agricultural sections for loans to cover the time of production. At present, the banker is largely debarred from entering this field by the cost of examining titles and drawing mortgages. The expense is so great, considering the length of time the loan is to run, that credit is usually obtained from the merchant. Especially is this true in the South, where a large part of agricultural credit is thus furnished. This is the legitimate field of the banker, and if a system of real estate registration should be generally adopted by which the mortgaging of real estate would be safe and inexpensive, there can be no doubt that the banks would permit such credit, both to their own and to the farmer's advantage. In a considerable part of real estate loans the mortgage is only a collateral security. The bank looks primarily to the personal credit of the individual, but is further protected by an assignment of a mortgage. In many communities, real estate mortgages are an important form of investment, and just as in other sections bonds and stocks are pledged as security for a loan, so here, mortgages are thus used.¹⁶

However profitable to the bank or economically beneficial to the community loaning on real estate may be, the final test which such a policy must meet is its effect on the safety of the bank. It would be difficult to find anywhere in the literature of state banks any opinion to the effect that such loans, to a moderate amount, tend to cause insolvency. On the contrary, the opposite view is frequently

¹⁶ The Comptroller of the Currency, in his report for 1887, p. 8, recommended that the national banking act be amended so as to permit this.

expressed.¹⁷ Whatever the theory may be on the subject, as a matter of practice, no complaint is made against real estate loans.

¹⁷ "In some sections, it has not been easy to employ the bank's funds without taking occasional real estate loans. This class of loans is, in some communities, the best paper offered. . . . Of course, banking institutions have failed, having among their assets large holdings of so-called real estate paper, however, where I have found opportunity to investigate such failures, I have uniformly found that the cause of the failure was not security—real estate or any other—but the lack of it." Essay by J. P. Huston, read before the Missouri State Bankers' Association, 1897. Bankers' Magazine, Vol. 56, p. 869.

CHAPTER V

LIABILITY OF STOCKHOLDERS

Under the common law, stockholders incurred no liability in the event of the insolvency of the corporation. There has gradually grown up in the courts of the various states what is generally known as the "Trust Fund Doctrine," under which it has been held that unpaid subscriptions to capital stock form a trust fund for creditors, and may be collected. The judicial view has been incorporated in the statutes of many of the states, until, at the present time, this doctrine may be said to be a universal rule of law in the United States. Since, however, as has already been shown, the laws in nearly all the states require stock in a banking corporation to be fully paid up either before active operations begin, or within a short time afterwards, the question of liability for unpaid subscriptions has become, except in a few states, of little importance, so far as banking companies are concerned. In Wisconsin, Georgia, Alabama, West Virginia, and Washington, a minimum capital of \$25,000 is required for banks, but only a part of this need be paid in. The same principle was applied in the Missouri and Kansas "savings bank" laws of 1864 and 1868 respectively. Such provisions affect the liability of stockholders only in banks with a smaller capital than the required minimum. The laws state, in effect, that banks having less than a certain capital need special regulation, and this is provided for by imposing an additional liability on the shareholders. There seems, however, no prospect of an increase of legislation of this character. The small bank is no longer an experiment, nor can it be shown that it needs special safeguards.

While the liability for unpaid subscriptions has been one

of diminishing importance as banking has been differentiated from other corporations, the opposite has been the case with respect to "statutory liability," i. e., the liability of stockholders beyond the amount of the capital stock held by them. It was early recognized that banks occupied a peculiar position, differing widely from other corporations in the fiduciary relations which they maintained to their creditors. It was thought just, therefore, that their stockholders should be charged with heavier liabilities. The first laws for the regulation of banking proceeded in this respect as in others on the principle that it was the note holder alone who was to be protected. Thus the antebellum laws of Maine¹ and Massachusetts² imposed the statutory liability only for the benefit of the creditors who held the bills of the bank. In later legislation, the liability was restricted to stockholders in banks of issue,³ but was for the advantage of all creditors. By the time of the Civil War, it had assumed its present form—a liability to the amount of the stock in addition to the stock. It has therefore become known as a double liability.⁴ With the prohibition of state bank issue, and the consequent cessation of state regulation of banks, the liability of stockholders in banks tended to become the same as that of stockholders in other corporations. With the acceptance of the principle that the depositor was entitled to the protection of banking regulation, came the renewed imposition of double liability as a part of the general scheme of banking legislation,⁵ until at present, the double liability

¹ Maine (1841), chap. 1, sec. 8.

² Mass. (1828), chap. 96, sec. 13.

³ Constitution of N. Y. (1845), Art. 8, No. 7; Pa. (1850), P. L. 477, sec. 32.

⁴ In a few states—Kentucky, Kansas, Minnesota, and Ohio—the double liability is imposed on the stockholders in all corporations. In California, they are chargeable with their proportionate part of the debts, and under the Indiana law, while not responsible for unpaid subscriptions, they are liable for a sum equal to the stock held by them. With these exceptions, the liability in the United States in other than banking corporations is usually a single one.

⁵ In Georgia, the liability is for the exclusive benefit of depositors.

is imposed in nearly all the states⁶ where state banking assumes any great importance.⁷

It cannot be said that the "statutory liability" in the state banking systems has proven of very great service as a protection to the creditors against loss. While it is impossible to cite statistics on this point since none are in existence, an examination of cases adjudicated under such laws shows that very little benefit accrues to the depositor from such provisions. As yet, little has been done in state legislation to make the liability efficacious, but there has been a slight movement in that direction sufficient to indicate the reasons for the failure to produce the results intended, and to point out the course which future remedial legislation will probably take.

In the first place, it has long been held by the courts that the statutory liability is directly to the bank's creditors and not to the bank itself as a corporation. In this respect it differs from an unpaid stock subscription, which is held to be an asset of the bank, and collectible by it before insolvency. As a consequence of this view, it has been held that in the absence of statutory provisions, the receiver of a failed bank, who succeeds to the rights of the corporation, can collect an unpaid stock subscription, but cannot enforce the statutory liability, since it is not an asset of the bank.⁸ There are two distinct lines of decisions as

⁶ The list includes: Rhode Island, Pennsylvania, New York, Maryland, West Virginia, South Carolina, Florida, North Carolina, Kentucky, Louisiana, Kansas, Nebraska, North Dakota, South Dakota, Oklahoma, Michigan, Minnesota, Wisconsin, Iowa, Illinois, Ohio, Indiana, Wyoming, Colorado, Utah, New Mexico, Washington.

⁷ The most notable exception is Missouri, whose constitution, Art. XII, sec. 9, restricts liability to "the amount of stock owned." Some Southern states, notably Virginia, Mississippi, Louisiana, Tennessee, lack this feature of banking regulation. With the exception of Louisiana, these are states chartering banks under an undifferentiated incorporation law.

⁸ The courts in Washington have taken an opposite view; *Waterson vs. Brook*, 15 Wash. 511.

to the method which creditors must adopt in order to secure the payment of the liability. The first is that the remedy is by an action at law. In such a suit, the creditor sues for himself, some one or more of the stockholders of the bank. The creditor who first brings suit obtains a favored position with respect to others. This was the method followed under the New York antebellum law for some years.⁹ The objection to the law action is that the proceeds of the liability should be divided among all creditors, and one should not be permitted to get, by superior diligence, a more than proportionate share of whatever may be collected. In a struggle for priority, creditors for small amounts fare badly. Another objection to the remedy at law lies in the fact that suits are multiplied. Each creditor must maintain a separate suit. In a very early case in Massachusetts,¹⁰ it was held that the suit at equity was the proper proceeding, since in this way, all parties could be joined in one action, and the proceeds might be distributed proportionately. The equitable remedy has proven so slow and costly in practise,¹¹ that it affords little security to the creditor, although more than the action at law, it seems in harmony with the general trend of banking legislation which is toward putting all creditors on an equal footing.¹² The suit at equity has been adopted by the majority of the state courts as the preferable remedy.

The impracticability of leaving the liability to be en-

⁹ *Bank of Poughkeepsie vs. Ibbetson*, 34 Wend, 473.

¹⁰ *Crease vs. Babcock*, 10 Metcalf, 125.

¹¹ The Ohio Supreme Court said: "By reason of the great number of stockholders, the frequent transfers of stock, the decease of parties, and of other causes, delays, vexatious expensive and almost interminable seem to be inevitable in such proceedings, so much so that such liability has grown to be looked upon as furnishing next to no security at all for the debts of the bank." 44 Ohio St. 318.

¹² This tendency is seen in the prohibitions of executions and preferences contained in the national bank act and several of the state laws, the design being to have assets divided proportionately among creditors.

forced by creditors was recognized in the antebellum banking laws of several states. The New York act of 1849 gave the receiver of an insolvent bank the power to enforce the liability. The same thing was effected in Massachusetts¹³ and Maine¹⁴ by somewhat later statutes. The national banking act contains the same provision. In the majority of the states, however, the liability was enforceable until quite recently exclusively by the creditors. It has only been since the revival of state bank regulation that any improvement has been made in this respect, and the tendency is to continue the earlier line of development, and transfer the right to collect the liability to the receiver.¹⁵ There seems a general consensus of opinion that the receiver can collect the liability more cheaply and quickly than the creditors.¹⁶

Unless there are statutory provisions to the contrary, it is a general rule of law, with few dissenting decisions, that the statutory liability is a secondary, and not a primary, one. The stockholder is not responsible to the creditor as a principal, but only after the assets of the corporation have been exhausted. The liability cannot be enforced until it has been ascertained, and it is necessary, therefore, that the affairs of the insolvent corporation shall be well ad-

¹³ Mass. (1860), chap. 167, secs. 1, 2.

¹⁴ Me. (1855), chap. 164.

¹⁵ Such laws are: N. Y. (1897), chap. 441; Neb. (1895), chap. 8, sec. 35; Kan. (1898), chap. 10, sec. 14; Ia. (18 G. A.), chap. 208; Wis. (1897), chap. 303, I, sec. 7 (this act was defeated, however); Minn. (1895), chap. 145, sec. 201; Mich. (1889), Act. 205, sec. 46.

¹⁶ The Supreme Court of Washington, in *Watterson vs. Master-ton*, 15 Wash. 511, said: "If any proof had been needed that the method pointed out in that opinion for enforcing the contingent liability (*i. e.*, by receiver) was demanded by public policy, and was in the interest of all classes interested in the bank, such proof is furnished by the record in this case. After great expense, and the waste of much time for the purpose of establishing the facts necessary to authorize the enforcement of the liability in behalf of creditors against stockholders, such creditors were in no better condition than the receivers were before they had commenced this proceeding."

vanced toward settlement, before the amount due can be ascertained. Usually, therefore, a considerable time must elapse before any action can be taken which will bind the property of the shareholder. In the meanwhile, it frequently happens that the liability can be evaded by the transfer of property.¹⁷ An efficient way of remedying this defect is to declare the liability a primary one, accruing immediately on the insolvency of the bank. It is probable, however, that the passage of such laws would bring about an evil greater than the one cured. When a bank failure occurs, there is always a check to the business of the community. A partial paralysis seizes its industrial life. At such a time, to proceed at once to collect the full liabilities of stockholders would prove a very great impediment to the rapid recovery of normal industrial activity. If insolvency of the bank imposes a lien on the property of the shareholders, much the same effect would be produced. The power of readjustment would be hampered at the very time when there is greatest need of it.

Despite the inconvenience of treating the liability as a primary one, there has been some movement in that direction. Thus, in Nebraska, it was enacted in 1895 that "such liability may be enforced whenever such banking corporation shall be adjudged insolvent, without regard to the probability of the assets of such insolvent bank being sufficient to pay all its liabilities."¹⁸ In the interpretation of

¹⁷ The same difficulty in the enforcement of liability was evidently felt in the antebellum systems. The appointment of a receiver in Maine constituted a lien on the real estate of shareholders to the amount of their liability. With the great increase in personal property proportionately to realty, it is doubtful if such a provision would now afford very much help.

¹⁸ Neb. (1895), chap. 8, sec. 30. On account of constitutional provisions peculiar to Nebraska, this section has been held unconstitutional. Farmers Loan & Trust Co., 49 Neb. 353; State vs. German Savings Banks, 50 Neb. 735. The Nebraska court recognized, however, the motive leading to the passage of the act. It said: "The policy of the statute is to afford a speedy and somewhat summary remedy for creditors of insolvent banks, and to

the Iowa statute,¹⁹ the Supreme Court has held that the liability created is primary, and it is not necessary to exhaust assets before enforcing it, but the assessment may be for the full amount, and any surplus remaining after the complete settlement of the trust, may be refunded.²⁰ The same view is taken of the statutes in California²¹ and Wisconsin.²² As yet, however, the old doctrine requiring the preliminary exhaustion of assets is little touched by statutory innovations.

enable the receiver for their benefit to promptly enforce all liabilities of stockholders; . . . the danger attending upon any process requiring securities to be immediately sold often on a falling market, or at a sacrifice, or if that danger be avoided, the still greater danger of delaying resort to proceedings against stockholders until such a time that by death or insolvency the remedies become ineffectual. . . . We may further acquiesce in the position of counsel that for the effective winding up of insolvent banks, and the protection of depositors, a remedy against stockholders should be permitted before, by the slow process of liquidation, other assets shall have been exhausted. *State of Nebraska vs. German Savings Bank*, 50 Neb. 740.

¹⁹ Iowa (18 G. A.), chap. 208.

²⁰ The Court said in the case of *State ex rel Stone, Attorney-General, vs. Union Stock Yards Bank*: "The liability for the payment to create the fund is not made to depend on the application of the fund, but on the fact of insolvency." "The liability is primarily for the full amount, subject to such an interest as will entitle him to any balance unexpended." 70 N. W. 772.

²¹ *Morrows vs. Superior Court*, 64 Cal. 383; *Hyman vs. Coleman*, 82 Cal. 650.

²² *Booth vs. Dear*, 96 Wis. 516.

CHAPTER VI

STATE BANK FAILURES

The final test of the safety of any system of banking is to be found in its statistics of insolvencies. The aim of legislation is to reduce the number of bank failures to a minimum, and, when they do occur, to procure the payment of a maximum percentage of claims. Unfortunately, the data in the case of state banks are of such a character as to make it almost impossible to reach any very definite conclusions as to the rate of insolvency. The states, as has been said, have been reluctant to give the officers charged with the execution of the banking laws any control over failed banks, and it is in only a few states that any official statistics are procurable on the subject.

Various attempts have been made by the Comptroller of the Currency to procure information on this point. In his report for 1879, Mr. Knox summarized the results of an investigation into failures of state, private, and savings banks occurring during the three preceding years.¹ The number of such banks failing in that period was 210, and it was estimated that 66 per cent of the claims would be paid. The eighty-one national banks which failed prior to 1879 had paid a slightly smaller percentage of claims, but the national system showed a much lower percentage with respect to the number of failures. It must be borne in mind that these figures class together state, private, and savings banks in such a way that the statistics for each class separately cannot be ascertained. At that time, of 4312 banks other than national in existence in the United States, only 1005 were state banks.² Consequently, these figures prove

¹ Report of Comptroller of Currency, 1879, p. 35.

² Report of Comptroller of Currency, 1879, p. 57. This includes trust companies.

very little as to banks in the state systems, unless it is assumed that state, private and savings banks fail at the same rate.

In 1895,³ the Comptroller undertook another investigation of similar character to that of 1879, and in 1896, the inquiry was continued. The banks reported as having failed, were not separated into classes, but were grouped together as "banks other than national." It was found, that as far as could be ascertained, 1234 banks of this character had failed since 1863, and that they had paid under fifty per cent of the claims against them.⁴ Another inquiry into the same subject, but confined to the question of the percentage of claims, was made by the Comptroller in 1899; it was found that 283 state, private, and savings banks failing between 1893 and 1899, had paid 56.19 per cent of all claims against them.⁵ Evidently the statistical information contained in the Comptroller's Reports, so far as we have yet examined, is useless for our purpose, since there is no possible way of separating state banks from other classes. This fact has not always been recognized, and erroneous statements as to the relative safety of the state and national systems have resulted. The Indianapolis Monetary Commission in its report said: "The total number of national banks which have failed since the establishment of the system was, at the end of 1897, 352 or 6.9 per cent of the 5095 which had been organized. As against this, 1234 failures of state banks are known to have occurred in the same period. The total number of state banks in operation during the year 1895-1896 was 3708, adding the 1234 failed banks, a total of 4942 is obtained, and though a certain number have doubtless gone into liquidation, or for some other reason do not appear in these figures, it seems safe to say that probably about twenty

³ Report of Comptroller of Currency (1895), Vol. I, p. 20. Id. (1896), Vol. I, p. 52.

⁴ Id. (1899), Vol. I, p. 648.

⁵ The number of failures in these years was more than 283, but only for these was the information as to claims procurable.

per cent of the total number of state banks organized during the period in question have failed. This would be a percentage nearly three times as high as that of the national banks which failed during the period.”⁶ The error made, consists in considering all of the 1234 failures as those of state banks, while that number includes at least some private and savings banks. The term “state bank” is used in the Comptroller’s report but synonymously in this case with “bank other than national.”⁷ There is abundant internal evidence that private banks were considered by some examiners as within the scope of the inquiry. Indiana, for example, is reported as having had 77 failures since 1873, while from reports to the State Auditor, it is certain that the number of state bank failures since 1873 has not exceeded twelve, and before that time there were practically no state banks in Indiana during the period investigated. It is uncertain how far private banks are included in the tables but many of them certainly are.⁸ It is quite impossible to show from such data anything as to the relative rate of state and national bank failures. It may be doubted if any system of banking in this country, even in an entire absence of regulation would show as high a rate of insolvency as that ascribed to state banks by the Commission. Regulation of the banking business is undoubtedly helpful in keeping down the number of fail-

⁶ Report of Monetary Commission, p. 277.

⁷ The results of the investigation are to be found in the Report of the Comptroller of the Currency for 1896, Vol. 1, pp. 52-57. The paragraph is headed “Results of an investigation relative to insolvent state banks from 1863 to 1896” but in the headings of the tables the expression “banks other than national” is uniformly used, and an examination of the letter of inquiry sent out to the bank examiners and on the answers to which the tables rest, shows that the two terms are used indiscriminately. In the first paragraph of the letter the investigation is said to be “relative to failed banks other than national” while later on the same banks are spoken of as “these State Banks.”

⁸ It is significant that of the 1234 failed banks, 233 were reported as having had no capital.

ures, but to suppose that, if banks were left to go with a free rein, they would fail three times as often, is to overrate the value of governmental oversight quite as much as it has been common to undervalue it.

Fortunately we have still another source of information. Since 1892 the Bradstreet Company has furnished the Comptroller annually with information by states as to all bank failures in the country. The banks are classified into state, savings, and private. The following table compiled from this source forms the only accurate body of statistics on the subject of state bank failures.⁹

According to the table, 336 state banks have failed since 1892, but this does not include the entire number of insolvencies, which may properly be classed as those of state banks: 1. State and savings banks are confused to a certain extent in these returns. In some states, stock savings banks are classed as state banks, consequently a certain part of the bank failures, termed those of savings banks by Bradstreet's, should be included in state bank insolvencies. The total number of failures of savings banks was 92, and of these, 26 were in states where there was no possibility of confusion, because the state and savings banks are separated. There will, therefore, have to be added to the 336 state bank failures, 66 of stock savings banks. 2. In one year, 1892, the returns of Bradstreet's, as given in the table, do not cover the entire period, but only extend over six months. The Comptroller, in his report for 1893, page 13, gave the number of state bank failures for the latter half of 1892 as eighteen. Making these additions, the total number of insolvencies of state banks for 1892-1899 is

⁹ The statistics of assets and liabilities given by Bradstreet's are, from the nature of the case, merely estimates, and are not included in the table. The statements as to number of failures have been compared, wherever possible, with returns of insolvencies in official reports, and, with an exception noted below, found to be highly accurate. Since the method of collecting the returns used by Bradstreet's is the same everywhere, it seems probable that, taken as a whole, the reports are correct.

States.	1892	1893	1894	1895	1896	1897	1898	1899	Total	States.	1892	1893	1894	1895	1896	1897	1898	1899	Total
Maine	1	1	1	1	1	1	1	1	1	Ohio	1	1	1	1	1	1	1	1	3
N. H.	1	1	1	1	1	1	1	1	1	Ind.	1	1	1	1	1	1	1	1	11
Vt.	1	1	1	1	1	1	1	1	1	Ill.	1	1	1	1	1	1	1	1	3
Mass.	1	1	1	1	1	1	1	1	1	Mich.	1	1	1	2	2	2	2	2	4
Conn.	1	1	1	1	1	1	1	1	1	Wis.	1	1	1	1	1	1	1	1	18
R. I.	1	1	1	1	1	1	1	1	1	Minn.	1	1	1	2	2	2	2	2	20
Total	1	1	1	1	1	1	1	1	1	Iowa	1	1	1	2	2	2	2	2	7
										Mo.	1	1	1	1	1	1	1	1	36
N. Y.	1	4	2	1	1	2	2	2	10	Total	1	1	1	1	1	1	1	1	3
Pa.	2	1	1	1	1	1	1	1	3	N. D.	1	1	1	1	1	1	1	1	3
N. J.	1	1	1	1	1	1	1	1	1	S. D.	1	1	1	1	1	1	1	1	1
Md.	1	1	1	1	1	1	1	1	1	Neb.	1	1	1	1	1	1	1	1	1
Del.	1	1	1	1	1	1	1	1	1	Kans.	6	21	6	2	7	4	6	6	57
Total	1	7	3	1	1	2	2	2	14	Mont.	1	2	1	1	1	1	1	1	52
Va.	5	1	1	1	1	1	1	1	5	Wyo.	1	1	1	1	1	1	1	1	2
W. Va.	2	1	1	1	1	1	1	1	2	Col.	5	1	1	1	1	1	1	1	6
N. C.	2	1	1	1	1	1	1	1	2	N. M.	1	1	1	1	1	1	1	1	6
S. C.	1	1	1	1	1	1	1	1	1	Okla.	1	2	1	1	1	1	1	1	6
Fla.	1	2	1	1	1	1	1	1	4	Total	10	39	10	21	24	14	7	7	125
Ga.	3	1	1	1	1	1	1	1	5	Wash.	1	1	1	1	1	1	1	1	18
Ala.	1	1	1	1	1	1	1	1	1	Oregon	1	4	1	1	1	1	1	1	5
Miss.	1	1	1	1	1	1	1	1	1	Cal.	4	7	1	1	1	1	1	1	10
La.	1	1	1	1	1	1	1	1	1	Ida.	3	8	2	2	2	2	2	2	5
Texas	1	2	1	1	1	1	1	1	1	Utah	5	1	1	1	1	1	1	1	2
Ark.	2	1	1	1	1	1	1	1	1	Nev.	11	1	1	1	1	1	1	1	2
Tenn.	5	2	1	1	1	1	1	1	7	Ariz.	7	1	1	1	1	1	1	1	1
Ky.	1	2	3	1	1	1	1	1	1	Total	20	4	6	6	6	1	1	2	41
Total	7	21	7	2	4	7	1	1	50	Total	21	127	27	44	54	44	14	14	336

{ See text for explanation of absence
of figures and allowance for

found to be 420. The average number of banks of this class in operation during these years was 3823. It will be noted, however, that in the table no returns are given of insolvencies in North and South Dakota.¹⁰ The average number of banks in these states for the past eight years has been 167. Deducting this amount from the average for all the states, we have 3656 as the number to be used in ascertaining the rate of insolvencies. It seems, therefore, that over eleven per cent of the average number of state banks in operation failed during the period from 1892 to 1899. In the same time, 225 national banks became insolvent, while the average number of such banks in operation was 3703, so that the percentage of insolvencies was six, or a little over one-half of that of the state banks.

At first sight, this seems to prove conclusively the much higher safety of the national system, but some consideration will lead us to see that the difference is by no means as significant as it appears. The period which the statistics cover was an abnormal one. The most lengthy and severest depression known in the history of the United States extended over the greater part of these years, and it is a well-known fact that the crisis was most keenly felt, and had its greatest effect, in those parts of the country in which the state banks are numerically strongest. The mass of banks, incorporated under state laws, are found in the Southern, Western, and Pacific states. The state systems are also comparatively strong in the Middle States, with the exception of Illinois, Indiana, and Ohio. Out of a total of 4200 state banks nearly 3500 are located in these groups. On the other hand, of 3590 banks in the national system in 1899, only 1570 are in these sections. The importance of this fact cannot be exaggerated in its effect on the statistics of insolvencies since 1892. On the one hand, five-sixths of the state banks are in those states which suf-

¹⁰ This was caused by the fact that state laws forbid the collection of such information.

ferred most from the depression, while less than one-half of the national banks are located there. Apart from any question of superiority of systems, economic conditions have powerfully affected the statistics of failures.

It is possible to determine more exactly what effect this difference in situation has had on the figures embodied in the table. Of 225 failures of national banks, 164 were in the sections named, and as has been said, the number of national banks located there was 1570. The rate of failures was, therefore, somewhat in excess of ten per cent. We may conclude then that section by section, the national system has a superiority over the state systems of little more than one per cent.

It must also be borne in mind that the regulation of state banks is by no means homogeneous in efficiency. In the figures given, state banks are indiscriminately mingled. It is fair to assume that state regulation promotes safety, since on no other ground can the national system be supposed to be superior. The period from 1887 to 1899 was most prolific in laws providing for state inspection. Practically, we may say state banking began as a system in the former year. It is reasonable to infer that this legislation has tended to the safety of banks. Considering all this, it may be safely asserted that the figures do not prove that state banking, wherever proper safeguards are provided, is any less safe than national. Even taking good with bad, the advantage of the national system in superior safety seems small.

This view of the question is confirmed by the expressed opinion of the head of one of the largest state systems. The Superintendent of Banking of New York said some years since:¹¹ "The Comptroller of the Currency, in his last report to Congress, in making a comparative statement of the percentage of failures between national and state banks, seems to be unable to make the result favorable to

¹¹ Report of Superintendent of Banking (N. Y.), 1893, page XXI.

the national banks without including under the head of state banks, also private banks and bankers, and in many of the states, loan and trust companies which are under no supervision whatever. The comparisons should therefore be disregarded as unfair and unjust. From some knowledge of the subject, I venture to say that if a comparison is made between national banks and the incorporated state banks only of various states of the Union, the showing will not be unfavorable to the state banks."

PART II.—THE STATE BANK AS A CREDIT AGENCY

CHAPTER I

THE GROWTH OF STATE BANKING

During the past twenty years there has been a remarkable increase in the number of state banks. This growth, however, has been little remarked since correct statistics have not been readily accessible.¹ Thus, the Comptroller of the Currency recently said,² "By reference to the statement of the resources and liabilities of the state banks from 1873 to 1897 it will be noticed that with but one exception there has been an uninterrupted increase in the number of banks reporting, which is due rather to legislative action providing for the collection of banking statistics than to an actual increase in the number of existing banks, although there has been a normal increase each year." The latter part of this statement is entirely inaccurate. The increase of state banks shown by the successive annual reports of the Comptroller is an actual growth and not a mere phantasm of increase caused by the increasing accuracy of the reports. The Comptroller has neglected to consider the increase which took place in the majority of states before official reports were begun. For example, according to reliable unofficial sources, Tennessee had eighteen state banks in 1877 and one hundred and thirty-nine in 1899.³ Up to the latter year, the Comptroller's reports, which are based almost exclusively on official data, showed only a small number of banks in this state. If in

¹ See below, p. 108, *et seq.*

² Report of the Comptroller of the Currency 897, Vol. I, p. xxxiii.

³ See Appendix, p. 114.

1899, Tennessee had inaugurated a system of bank supervision, the interpretation put by the Comptroller on the resultant increase in the number of state banks reported would be that it was caused by "legislative action providing for the collection of banking statistics"; that the banks had always been there but had only now come to be reckoned. This would be very nearly a true explanation of the large apparent increase for that particular year but not of the growth since 1877. The true state of the case is that the numbers of state banks as given by the Comptroller for successive years, do show a real increase but they reflect it only spasmodically and indirectly. The following parallel columns show this quite clearly.

Years.	No. of state banks as given in the Report of the Comptroller of the Currency.	Approximately correct number of state banks. ¹
1877.....	592	823
1878.....	475	815
1879.....	616	814
1880.....	620	816
1881.....	652	820
1882.....	672	848
1883.....	754	937
1884.....	817	1022
1885.....	975	1120
1886.....	849	1214
1887.....	1413	1526
1888.....	1403	1732
1889.....	1671	2093
1890.....	2101	2552
1891.....	2572	3051
1892.....	3191	3457
1893.....	3579	3662
1894.....	3586	3662
1895.....	3774	3767
1896.....	3708	3877
1897.....	3857	3937
1898.....	3965	4008
1899.....	4191	4215

¹See explanatory note to appendix for method of obtaining figures in this column.

It will be seen that the increase in the number of state banks has been especially rapid since 1886. In that year they were far outnumbered by both private and national banks, but in 1899, they formed the most numerous class

of banks in the country. The following table shows the number of private, state and national banks at certain dates:⁴

	1879	1884	1889	1894	1899
National,	2055	2550	3158	3786	3590
State,	814	1022	2093	3662	4215
Private,	2545	3458	4215	3844	4168

Of the whole number of banks of discount and deposit operating in the United States on January 1, 1900, considerably over one-third were incorporated under state laws while in 1879 less than one-sixth were of that character. A class of banks which has gained so rapidly on its competitors cannot properly be said to have been experiencing merely a "normal" increase.

The rate of increase of state banks, however, has by no means been the same in the different sections of the country.⁵ In the New England States, the number of state banks is less than it was in 1877. Under the early provisions of the national bank act, the amount of circulation was limited and apportioned in fixed sums among the states. In the Eastern States this limit was soon reached and new banks were debarred from the profit to be obtained on note issue. The result was that the number of state banks was increased somewhat but on the removal of the restriction on circulation, the banks went over in considerable numbers to the national system. In 1877, there were 227 banks, organized under the state laws, in the Eastern States; by 1887, the number had fallen to 202. Since that time, there has been some growth of state banking in these states but chiefly in New York. Of a total increase of 131 banks in the group since 1887 over two-thirds

⁴The figures for national banks are from the Report of the Comptroller of the Currency, 1900, Vol. I, p. 255; the numbers of private and state banks are taken from the tables contained in the Appendix.

⁵This and the following observations are based on the statistics of state banks contained in the Appendix, pp. 114, 115.

are in that state. Compared with the growth in the country as a whole, this increase is almost negligible. It may be said that the New England and Eastern States seem to have no need for state banking.

The case is not much different in the more southeasterly of the Middle States. The growth here, while apparently considerable, has been largely in savings banks in Ohio. Of the 144 state banks reported for that state in 1898 about 90 were of that character.⁶ In both Indiana and Illinois there has been a moderate increase in state banks, using the term in its strict sense.

Leaving Illinois, one enters the field of greatest importance for the development of state banking. The remaining states of the Middle West, the Southern, Western and Pacific States show since 1877 an enormous expansion in the numbers and importance of state banks. In all this great territory there is hardly a state with the exception of Texas,⁷ in which the relative and absolute importance of state banking has not grown decidedly during the period under consideration. In the following table the number of state banks is given for each group of states for the years 1877 and 1899:

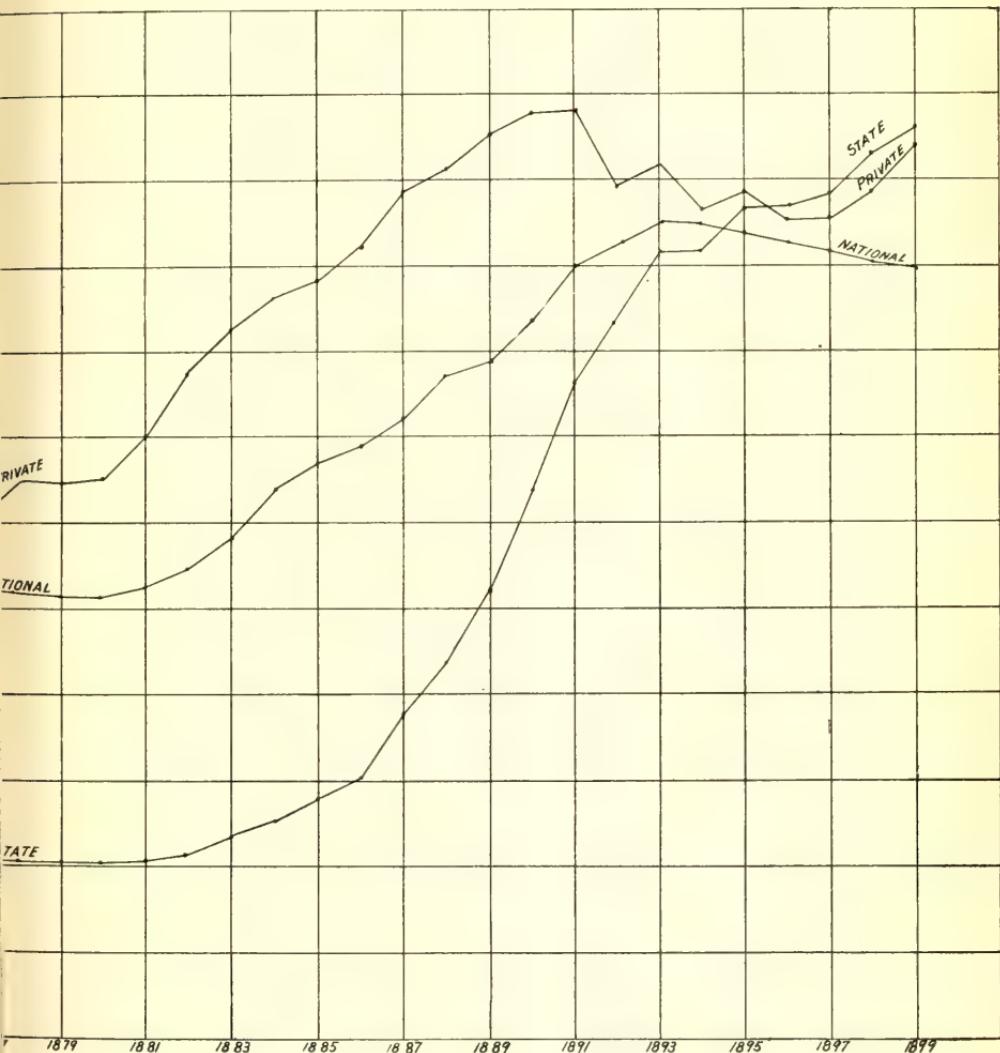
	1877	1899	Percent- age of increase.
New England States,	27	22	—19
Eastern States,	227	333	47
Ohio, Indiana, Illinois,	87	358 ⁸	312
Other Middle States,	201	1194	495
Western States,	39	956	2351
Southern States,	197	1077	446
Pacific States,	45	275	511
	823	4215	412

⁶ Knox, "History of Banking in the United States," p. 690.

⁷ See p. 15.

⁸ Of these 358 banks, not more than 270 are banks of discount and deposit.

DIAGRAM SHOWING NUMBER OF PRIVATE, STATE AND NATIONAL BANKS, 1877-1899.



It will be readily seen that the growth of state banks since 1877 has been considerable only in the four last groups while in the first three it has been of small importance.

Not only in the growth of state banks but also in their present importance compared with national and private banks the same broad division of the states may be made. The following table shows the relative strength in numbers and capital of the three classes of banks for the year 1899:¹

TABLE SHOWING THE NUMBER AND CAPITAL OF NATIONAL AND STATE BANKS BY GROUPS OF STATES FOR THE YEAR 1899.¹

Group.	National Banks (Dec. 1, 1898.)			State Banks.			Private Banks.
	Number.	Capital in millions of dollars.	Average Capital in thousands of dollars.	Number.	Capital in millions of dollars.	Average Capital in thousands of dollars.	
New England.....	583	156.4	268	23	3.7	161	198
Eastern.....	956	192.1	201	333	42.8	128	813
Ohio, Ind., Ill.....	583	95	163	358	26	72	1108
Other Middle States...	461	62.1	135	1194	54.5	45	1237
Southern.....	538	63.9	119	1077	60.7	56	416
Western	346	31.1	90	956	16.5	17	301
Pacific.....	123	20	163	275	35	127	95

¹ The figures for the number and capital of national banks are taken from the Report of the Comptroller of the Currency; those for the number of state and private banks from the tables in the appendix. The capital of state banks has been estimated from data in the Report of the Comptroller of the Currency on the assumption that omitted banks have the same capital as those reporting in each group.

In the New England, Eastern, and the more southerly of the Middle States, neither in numbers nor in capital do the state banks equal the national ones, although it is to be noted that they gradually increase in importance in the groups in the order named. In every other section of the country the state banks are at least twice as numer-

² Capital is not given for private banks since in only a few states can even approximate estimates be obtained.

ous as the national banks and approximate them in the capital invested; in one case, that of the Pacific states, surpassing them.¹⁰

The growth of state banks shows three fairly well-defined periods since 1877. Until 1885 the increase was by no means rapid, the average yearly accessions being about forty. From 1885 to 1893, the growth was enormous. During this period, about 300 new banks came into the state systems each year. The consequence was that in those eight years the number was trebled. Since 1893 the increase has been slower.

¹⁰ Prof. Dunbar pointed out the same facts in somewhat different form in an article in the *Quar. Jour. Econ.* for Oct., 1897. The statistics used by him were taken entirely from the reports of the Comptroller of the Currency and consequently differ in some respects from those used here.

CHAPTER II

CAUSES OF THE GROWTH OF STATE BANKS

Since private and national as well as state banks are banks of discount and deposit, the disproportionate increase of state banks must be explained by their superior advantages over one or both of the classes competing with them. It must be noted, however, that the national and private banks have almost exclusive fields of operation, for very few private banks have a capital sufficiently large to enable them to organize under the national bank act.¹ The state bank on the contrary is a rival of both the other classes since its capital requirements are in many cases low enough to make it possible for private banks to become incorporated if they desire to do so. The causes, then, which have led to the increase of state banks may be divided into two categories accordingly as they have been influential in giving the state bank an advantage over the private or the national bank.

State versus Private Bank.—There are two distinct functions which private banks fulfill, (1) as an adjunct of the brokerage business in large cities; (2) as a means of furnishing credit in small communities, chiefly in agricultural

¹ According to the returns made to the internal revenue officials in 1882, the average capital of private banks in the United States was \$33,000. In the Middle States, where they were numerically most powerful, the average capital was under \$20,000. It is impossible to ascertain for all sections the average capital of private banks at the present time, but it is improbable that it is higher than \$15,000 for the whole country. This estimate is based on the returns made under the internal revenue law of 1808. (Report of the Comptroller of the Currency, 1899, Vol. I, pp. 298, 299.). State and private banks are confused, but since for many states the number and capital of state banks are known, that of private banks can be found. In the Middle States the average capital of private banks is estimated by this method to be considerably below \$10,000.

sections. It is in the latter of these capacities that they enter the same field as the small state banks. The chief characteristic of both classes is small capitalization. In a section with a sparse population, if banks are to be had at all, they must be of small capital, since the business which can be obtained does not justify the investment of large sums. If the banks can issue currency, their field of operation can be somewhat extended beyond that of banks doing only a discount and deposit business and their average capital may profitably be somewhat higher.

The westward extension of the settled area in this country has continually called into existence banks of small capital. In 1850 the banks of Ohio, Indiana and Illinois, even those issuing notes, were small compared with similar credit agencies in the East. There is evidence also, although statistics cannot be cited that even the \$25,000 banks of Ohio, Indiana and Illinois, although they were banks of issue, were too large to be profitably operated in places having only a small banking business.¹ Private banks were, therefore, set up in many of the villages. When the national bank usurped the place of the state bank, a still wider field was created for the private bank since under the national act places which could not profitably employ a banking capital of \$50,000 were forced to resort to private institutions. It is true that the old state banking acts remained on the statute books, but their provisions were entirely unsuited to banks doing only a discount and deposit business. The rapid settlement of the West which followed the Civil War required an ever-increasing number of small banks, and since the state laws were framed on the theory that the government could properly concern itself only with banks of issue, private banks had almost a monopoly of the banking business in the smaller centers. The following

¹ Thus in *Davis vs. McAlpin* (1858), Ind., 10; 137, the Court said: "Private banks of discount and deposit must have existed to a very limited extent, if at all, in the early period of our legislation. But in later years, they have become numerous and are discharging a large portion of the banking business."

table shows with what rapidity, under these conditions, the growth of private banks proceeded:

NUMBER OF PRIVATE BANKS ²	
1877.....	2432
1888.....	4064
1899.....	4168

In the period 1877-1888 the rate of increase was nearly sixty-eight per cent, but from 1888 to 1899 it was less than three per cent. This has come about despite the fact that the private banks in the larger cities have been continually growing. The diminution in the number of private banks in the small towns has nearly counterbalanced the increase of broker's banks. That this check to the growth of private banks has been caused in considerable degree by the preference for the chartered bank is evident if one considers the growth of state banks of small size, as shown in the following table:

NUMBER OF STATE BANKS HAVING A CAPITAL OF LESS THAN \$50,000 ³	
1877.....	187
1888.....	747
1899.....	2529

The chief reason for the partial supplanting of the private bank is the advantage of the corporate form of organization in giving greater security to the depositor and consequently increasing the credit of the bank. The desire to obtain a charter cannot become effective, however, unless the capital requirement is sufficiently low to permit the private banks profitably to make the transformation. If the business of a locality will only support a bank with a capital of \$5000, and the state laws require a minimum capital of \$25,000 for an incorporated bank, the extra credit which might be obtained will not be a sufficient inducement to bring about the change to the state system. The lowering of the capital requirements⁴ has consequently

² See table, p. 82.

³ See table, p. 82.

⁴ See ante, p. 27.

been a potent cause in furthering the growth of small state banks.⁵ The following self-explanatory table enables us to see in what sections and to what extent the state bank has displaced the private bank.

NUMBER OF PRIVATE BANKS AND OF SMALL STATE BANKS (i. e. HAVING A CAPITAL OF LESS THAN \$50,000) BY STATES FOR THE YEARS 1877, 1888, 1899.

States.	1877.		1888.		1899.	
	State Banks, less than \$50,000 Capital.	Private Banks.	State Banks, less than \$50,000 Capital.	Private Banks.	State Banks, less than \$50,000 Capital.	Private Banks.
Me. ....	..	8	..	12	..	8
N. H. ....	..	12	..	3	..	2
Vt. ....	..	1	..	2	..	1
Mass. ....	..	52	..	74	..	160
Conn. ....	..	14	..	19	..	16
R. I. ....	..	5	..	7	..	11
Total N. E. States ..	..	82	..	117	..	198
N. Y. ....	..	289	12	256	63	446
N. J. ....	..	10	8	6	..	4
Pa.	30	306	..	243	..	316
Md. ....	..	23	2	19	6	43
Del. ....	..	3	..	3	..	4
Total East- ern States.	30	631	22	527	69	813
Va.	18	30	24	30	47	27
W. Va.	6	8	12	3	47	4
N. C. ....	..	9	4	23	29	24
S. C.	2	19	8	22	29	19
Ga.	3	39	4	71	42	42
Fla. ....	..	8	1	27	13	11
Ala. ....	..	17	1	49	8	34
Miss.	2	21	3	15	56	5
La. ....	..	7	..	14	36	8
Texas	3	73	3	130	..	187
Ark. ....	..	12	8	20	63	14
Tenn.	10	10	10	20	83	9
Ky.	11	36	27	36	76	32
Total South- ern States.	55	289	105	460	529	416

⁵ A "small state bank," in the sense in which the expression is used here and in the following pages, is one having a capital of less than \$50,000.

States.	1877.		1888.		1899.	
	State Banks, less than \$50,000 Capital.	Private Banks.	State Banks, less than \$50,000 Capital.	Private Banks.	State Banks, less than \$50,000 Capital.	Private Banks.
Ohio	16 a	219	15 a	250	51 a	287
Ind	2	111	11	156	47	222
Ill.	282	2	441	86 b	599	
Mich.	2	131	17	220	80	249
Wis.	12	70	28	102	87	120
Mo.	25	104	141	122	390	110
Minn.	6	49	29	152	114	239
Iowa.	13	201	49	423	120	519
Total Middle States.	76	1167	292	1866	975	2345
Kans.	14	84	120	365	259	81
Neb.	2	30	104	306	313	65
N. D.	}	8	50	196	{ 103	2
S. D.						
Mont. . . . .	..	5	..	11	5	21
Wyo.	2	5	1	12	6	12
Col.	1	25	17	69	20	55
N. M. . . . .	..	4	2	10	5	7
Okla. . . . .	..	..	..	..	56	1
Total Western States.	21	161	294	969	861	301
Wash. . . . .	..	2	2	14	17	24
Or. . . . .	..	6	2	21	15	20
Cal.	5	65	26	52	44	29
Ida. . . . .	..	3	2	16	8	9
Utah. . . . .	..	7	..	8	4	11
Nev. . . . .	..	18	1	10	2	2
Ariz. . . . .	..	1	1	4	5	1
Total Pacific States.	5	102	34	125	95	95
Total U. S.	187	2432	747	4064	2529	4168

a Excludes savings banks.

b Includes savings banks.

NOTE.—The table is constructed from data found in the various state bank reports and in Homans' Bankers' Almanac.

It will be seen that during the past twenty years private banks have been of small importance in the New England and Eastern States. The greater number of them are lo-

cated in the cities. Similarly there are very few state banks in these sections with a capital of less than \$50,000. It is only in New York that the small state bank is found in considerable numbers. This is partly accounted for by the fact that in Pennsylvania and New Jersey the minimum capital for state banks is \$50,000. Whatever demand for small banks there has been in these groups has been met by private banks. That it has not been great is evidenced by the small number in existence. The stage of development reached makes small banks unnecessary.⁸ The \$50,000 bank fills the needs of this section. Neither the small state bank nor the private bank appears to have any future so far as these states are concerned.

In the Southern States the number of private banks in 1877 was 289 while there were only 55 state banks of small capital. The gradual movement toward incorporation, facilitated by the adoption of general laws, has caused a complete change in the relative position of the two classes, so that in 1899 the state banks were in the ascendancy, and if the large number of private banks in Texas is deducted, it appears that the small state banks are twice as numerous as their rivals.

It will be noted that in 1899 considerably more than one-half of the private banks in the country were in the Middle States. Even in 1877, they were well established in this section, numbering 1167 as against 106 of the small state banks. It is here that the chartered bank has made relatively its least advance. The high capital requirements which have never gone below \$10,000 in any state in this group, and in most of them not below \$25,000 has kept the

⁸ Under the amendment to the national act passed March 14, 1900, up to Sept. 30, 1901, there were organized in the New England and Eastern States seventy four banks with a capital of less than \$50,000. Of these, thirty-seven were in Pennsylvania and ten in New Jersey. It appears that there is but small room for the \$25,000 bank in any state in these two groups. In all the New England States only four such banks were chartered.

greater part of the banking business in smaller communities in the hands of the private bankers. That this has been the chief hindrance to the absorption of these banks into the state systems is clear from the fact that in those states where the required capital is placed at a high sum the number of private banks is relatively greater.⁷

	No. of State Banks with less than \$50,000 capital.	Private Banks.	Total	Per cent of Private Banks.	Minimum Capital required for State Banks.
Ohio,	51	287	338	.85	\$25,000
Indiana,	47	222	269	.84	25,000
Illinois,	86	599	685	.87	25,000
Iowa,	120	519	639	.81	25,000
Michigan,	80	249	329	.76	15,000
Wisconsin,	87	120	207	.58	15,000
Minnesota,	114	239	353	.67	10,000

The Western Group is the one in which the conflict of the private and the small state bank has been keenest and in which the state bank has almost vanquished its rival. Since 1888, the private banks in this section have declined rapidly in numbers. There have been two causes for this transformation in the character of the banks. In the first place, the necessary capital for the organization of an incorporated bank is low, being only \$5000 for the distinctively agricultural states in this group. But there has been something more than mere preference for the corporate form of organization which has brought about an almost complete abandonment of private banking. The growth of the small state banks has been much forwarded here by legislation, which has had the effect of causing the private banks in large part to become incorporated. In order to understand the purpose and cause of these laws, it will be necessary to examine them in some detail.

⁷ Missouri is included among the Western States since it is similar to them in requiring private banks to have a capital. This, as will be shown below, has a considerable effect in influencing private banks to become incorporated.

The regulation of the business of unincorporated bankers is an outgrowth of the general change in feeling as to the nature of the banking business. The view that banking, even when confined to the discount and deposit functions is charged with a public use has caused restrictions to be imposed on it, although carried on by an individual. This regulation assumes several phases. In the first place, it has been urged in several states that a private banker should not operate under a corporate name. This argument has had especial force in states where incorporated banks are under state supervision. It has been thought just that the public should know with what form of banking institution it is dealing. It appears to be quite common in some sections for private banks to assume names which indicate that they are incorporated. The Public Examiner of Minnesota called attention to the fact that in 1886, of 126 private banks carrying on business in that state, 116 had corporate names.⁸ The laws of New York,⁹ Minnesota¹⁰ and Washington¹¹ impose no other restriction on private bankers. In a few states the regulation of unincorporated banks has gone no farther than the requirement of reports. This is the case in California¹² and Mississippi.¹³ This and the preceding provision evidently aim only at the information of the public; they do not profess to effectively safeguard the banking business.

In still another group of states, private banks are put on the same footing with incorporated banks as to supervision and regulation. Such is the case in North Carolina,¹⁴ New Jersey¹⁵ and Wisconsin¹⁶ which require private banks to

⁸ Seventh Report of Public Examiner of Minn., 1886; see also Reports of Commissioner of Banking (Mich.), 1892; 1893; 1894.

⁹ Laws of New York (1882), ch. 409, No. 311.

¹⁰ Laws of Minn. (1887), ch. 39.

¹¹ Laws of Wash. (1891), p. 130.

¹² Laws of Cal. (1887), p. 90.

¹³ Laws of Miss. (1888), p. 29.

¹⁴ Laws of N. C. (1887), chap. 175.

¹⁵ Laws of N. J., (1895), chap. 361.

¹⁶ Laws of Wis. (1895), chap. 291.

be examined and to make reports.¹⁷ In 1897, Georgia subjected private banks to the same requirements that state banks were under, but this law was repealed in 1898.¹⁸

Supervision of private banks is carried on under difficulties which render it much more imperfect than in the case of incorporated banks. It has already been pointed out that the fundamental safeguard under the systems of bank regulation used in the United States is a capital. Our whole scheme of supervision is built on that requirement, and under the laws in vogue in most of the states of the Union, a private banker is not required to have any specified amount of capital. In the last group of states to be considered it is this defect which an attempt has been made to remedy. Missouri was the first state to adopt this policy. By act of 1877, private bankers are prohibited from engaging in the business of banking without a paid-up capital of not less than five thousand dollars, and they cannot employ their capital otherwise than as banks of discount and deposit are permitted to do.¹⁹ By the act of 1895²⁰ they are subjected to the same supervision as incorporated banks, and it is made the duty of the examiner to proceed against them in case of impairment of capital. The same plan of securing a capital has been tried in Nebraska. The capital required for incorporated and unincorporated institutions for banking is of equal amount, and in every respect, except the ownership of real estate, the same restrictions are placed on the two classes of banks.²¹ When the first Kansas act for the regulation of the banking business was passed, it included, practically, the same feature.²² Section 35 makes private banks "amenable to all

¹⁷ Laws of Ga. (1897), p. 59.

¹⁸ Laws of Ga. (1898), p. 12.

¹⁹ Private bankers were defined as those "who carry on the business of banking by receiving money on deposit, with or without interest . . . and of loaning money without being incorporated." Revised Statutes (1897), sec. 921.

²⁰ Laws of Mo. (1895), p. 97.

²¹ Laws of Neb. (1889), chap. 37, and id. 1895, ch. 8.

²² Laws of Kan. (1891), chap. 43, sec. 35.

the provisions of this act," and this has been construed so as to require such banks to have capital of the same amount as incorporated banks.²³ More recently Kentucky has adopted the same policy: a minimum capital of \$10,000 is required for private banks,²⁴ and in the Utah Revision of 1898 the Kentucky provisions are copied,²⁵ except that the amount of capital required varies with the size of the population of the place in which the bank is located.

But in almost all of these states a difficulty has presented itself which seems to make the requirement of capital but a small protection to the depositor. The private banker is frequently engaged in other business besides that of carrying on the bank, and in the event of his failure, creditors other than depositors come in for a share of the assets. A corporation, on the other hand, cannot engage in business other than that prescribed by its charter. In Missouri and Kentucky the law forbids the private banker to use any of his funds in other business, but he may use other funds, and even without actually engaging in any other business, he may accumulate an indebtedness which may prove a severe charge on the banking assets. In a recent case in Nebraska, it was held that under the law in that state, "an unincorporated bank, exclusively owned by a private individual, is not a legal entity, even though its business be conducted by a president and a cashier, and that in such a case, the assets of the bank represent merely the portion of the owner's capital invested in banking, and he may law-

²³ The Commissioner, in his report for 1892, p. 1, recommends that "as to the rights and duties of private banks, the law should be made more definite. While secs. 17 and 35 recognize the rights of individuals or partners to do a banking business without incorporating, yet the other sections of the law seem to have been framed for application to incorporated banks only; hence, in the construction of the law as to its application to private banks, it requires not only a constant recollection of sec. 35, but a vivid and analytical imagination as well."

²⁴ Laws of Ky. (1893), chap. 171, pp. 62, 63, 64, 65.

²⁵ Revised Statutes of Utah, 1898, sec. 380.

fully dispose of them to pay or secure the just claims of any of his creditors.”²⁶ In Kansas this question was met by an enactment in the law of 1897 that “Any individual or firm doing business as a private bank shall designate a name for such bank, and all property, real or personal, owned by such bank, shall be held in the name of the bank, and not in the name of the individual or firm; all of the assets of any private bank shall be exempt from attachment or execution by any creditor of such individual or firm until all liabilities of such bank shall have been paid in full. No private banker shall use any of the funds of the bank for his private business.”²⁷ This makes of the private banker in Kansas a corporation, to all intents and purposes, except that his liability is unlimited, and that he has no perpetuity. It is practically the creation of a new sort of corporation. The same difficulties have manifested themselves in Wisconsin, where no capital is required for private banks. The State Examiner, in his report for 1899, page xii, says: “The main difficulty in supervising the private bank is that . . . the individual, or firm, or individual members of the firm may be indebted to outside parties to such an extent as to cause the person or firm to be insolvent.” He doubts, however, whether it would be constitutional to prohibit a private banker from engaging in other business or to make depositors preferred creditors.

South Dakota, North Dakota and Oklahoma have dealt radically with the problem. They have passed laws requiring all persons conducting a banking business to become incorporated.²⁸ In both South Dakota and North Dakota the law was contested as unconstitutional, but with different results. The Supreme Court of North Dakota, in *State vs. Woodmansee*,²⁹ held that the requirement of

²⁶ Longfellow & Barnard, 79 N. W. 255.

²⁷ Laws of Kan. (1897), chap. 47.

²⁸ Laws of N. D. (1890), chap. 23, sec. 27; Laws of S. D. (1891), chap. 27, sec. 27; Laws of Okla. (1897), chap. 4, sec. 2.

²⁹ 1 N. D., 246.

incorporation was constitutional, and was a legitimate exercise of the police power. The South Dakota court took an entirely different view of the question, the gist of its decision being that banking, except with the right of issue, was not a franchise at the common law, and had not been made one by the constitution of South Dakota.³⁰ "Whence then," asks the court, "did the legislature of the state derive its power to farm out these privileges to corporations, and to deny to the individual citizen the right to exercise them, which he and his ancestors have from time immemorial possessed?"³¹

It is undoubtedly true that banking, even with the right of note issue, was not a franchise according to the common law. It is equally undeniable that at a comparatively early period the right of issue was confined to incorporated banks, and such banking became a franchise. The question would seem to be then by what means the transformation was effected, or, to put the matter more broadly, by what means a franchise may be created. Under our system of jurisprudence, is a constitutional provision necessary to create a franchise, or may it be done by legislative act simply? Looking at the question historically it is clear that note issue was made a franchise in many states without the intervention of constitutional provisions. In the case of *Bank of Augusta vs. Earle*,³² the Supreme Court said, "The institutions of Alabama, like those of the other states, are founded upon the great principles of the common law, and it is very clear that at common law, the right of banking in all its ramifications belonged to individual citi-

³⁰ *State vs. Scougal*, 3 S. D., 55. The court also found the law unconstitutional as being in conflict with certain provisions of the state constitution guaranteeing individual rights. It was also held to be a violation of the 14th Amendment to the Constitution of the United States. These objections evidently depend on the answer to the question, "Is banking a franchise?" If that is answered in the negative, individual rights would not seem to be violated.

³¹ *Id.* p. 57.

³² 13 Peters, 595.

zens, and might be exercised by them at pleasure. And the correctness of this principle is not questioned in the case of *State vs. Stebbins*. Undoubtedly the sovereign authority may regulate and restrain this right, but the constitution of Alabama purports to be nothing more than a restriction upon the power of the legislature in relation to banking corporations, and does not appear to have been a restriction on individual rights. That part of the subject appears to have been left, as is usually, for the action of the Legislature to be modified according to circumstances, and the prosecution against Stebbins was not founded on the provisions contained in the constitution, but was under the law of 1827 prohibiting the issue of bank notes."

The view of the North Dakota court was essentially in accord with the facts in the case. The purpose of the state in requiring incorporation was to exercise more effectively its police power. The decision of the South Dakota court looks rather at the creation of the franchise. It is this difference in the view point which causes the opposition in decisions: the one court regards incorporation in our modern way as simply an instrument or method of carrying on a business, while the other looks as it as an end. The question has never come before the courts in Oklahoma, so that of two decisions, one upholds, and the other denies, the right of the legislature to require the incorporation of private banks. Regulative acts, even those requiring a capital stock, have been uniformly upheld by the courts as an allowable exercise of the police power.³³ Even in *State vs. Scougal*, it was said, "Assuming that the business of banking we are now considering is clothed with such a public use that it may be controlled by the State—and we think it so affected with a public interest, etc."

The question is one which is evidently exciting an increasing amount of interest; it seems clear that the best plan for the regulation of banks under the present systems

³³ *Blaker vs. Hood*, 53 Kans., p. 499.

of supervision lies in requiring incorporation. The Secretary of the State Board of Nebraska, in his Eighth Annual Report, commenting on the decision of the Supreme Court in *Longfellow vs. Barnard*, says, "The decision denies to an individual engaged in the banking business as a private banker the right to set aside any portion of his capital as bank capital upon which depositors or other creditors of his bank would be entitled to a prior lien, and makes the capital of his bank subject to all of his debts, bank and otherwise, and makes all of his property, bank capital and other, liable for any of his debts, thus placing a private bank owned by an individual as a part of any other business in which he may be engaged. If this decision is to stand as the law of this state, then should private banks owned by individuals be prohibited by law?" Also in Kansas, the present law, seemingly going as far in assimilating an unincorporated bank to a corporation as it is possible to go without requiring incorporation, does not satisfy the Commissioner, for in his report for 1897-1898, p. xi, he says, "While some very good lawyers are in doubt as to the power of the state to require all banks to incorporate, many of our ablest attorneys express the belief that it is within the power of the legislature to designate the manner in which this privilege may be exercised. I therefore recommend that our banking law be so amended as to require all banks to incorporate. If this recommendation should fail of adoption, I recommend that private bankers be prohibited from engaging in other business, and that all private bankers be required to live within the state."

The following table shows how important this legislation has been in changing the relative position of state and private banks in these states.

NUMBER OF PRIVATE AND SMALL STATE BANKS IN STATES HAVING LAWS PROHIBITING PRIVATE BANKS, OR REQUIRING THEM TO HAVE A CAPITAL.³⁴

	1877		1888		1899	
	Private Banks.	Small State Banks.	Private Banks.	Small State Banks.	Private Banks.	Small State Banks.
Kansas.....	84	14	365	120	81	259
Nebraska.....	30	2	306	104	65	313
North Dakota. }	8	2	196	50	2	103
South Dakota. }	104	25	122	141	57	94
Missouri.....	...	..	..	..	110	390
Oklahoma.....	226	43	989	415	316	1215
Total						

With regard to Missouri it will be seen that while small state banks are sixteen times as numerous as in 1877, private banks have hardly increased at all.³⁵ In the remaining states the number of private banks was at its highest in 1888. The decisive years were from 1888 to 1892, for it was during this period that the restrictive legislation was enacted. In those states of the Western Group in which agriculture is a less important industry than mining or stock-raising, and in most of the states of the Pacific Group, the movement toward incorporation is less marked. The capital minimum is higher and no great advance has been made in bringing private banks under supervisory control.

State *versus* National Bank.—While, as has been pointed out, legislation has been a chief cause of the growth of small state banks at the expense of private banks, no factor of the same kind has operated against the extension of national banks. Opposition to the national bank, a pro-

³⁴ In Kentucky and Utah the effect of the legislation is not so appreciable, since in neither state is there any large number of private banks. In Utah, moreover, the act is too recent for its full influence to be seen.

³⁵ About one-half of the private banks of Missouri have a capital of less than \$10,000. As has been said, the minimum capital for a state bank is \$10,000, and many of the private banks would probably incorporate if the minimum were lowered.

nounced feature of recent political alignments, has never taken the form of an attempt to promote a rival system. In so far as the state bank has won a place for itself by the side of the national bank, it has done so on purely economic grounds. The fundamental reason for the existence and growth of small state banks as well as of private banks is the small capital requirement. This is, however, quite inadequate as an explanation of the growth of state banks as a whole since many of them have a capital sufficiently large to enable them to enter the national system. Preference rather than necessity has made and keeps them state organizations.

There are three chief differences between the national and the state systems so far as their relative profitableness is concerned. In the first place, the national banks have the exclusive power and to a certain extent are obliged to issue circulating notes. It has frequently been shown that the provision of the national act requiring each bank "to transfer and deliver to the Treasurer of the United States . . . bonds . . . to an amount where the capital is one hundred and fifty thousand dollars or less of not less than one-fourth of the capital and fifty thousand dollars where the capital is in excess of one hundred and fifty thousand dollars"⁸⁶ imposes a hardship on those banks which do not find their circulation a source of profit. From 1887 to 1899 there was little if any advantage accruing to the banks of the South and West from the issue of notes. This result was due to the high price of U. S. bonds. The amount of circulation which could be secured was much less than the cost of the bonds which must be deposited. In order to issue \$90,000 of circulation, a bank had to pledge \$100,000 of government securities, the cost of which at times ran as high as \$128,000. The interest on the \$38,000 of difference was lost. Where the local interest rate was high, this loss was sufficient to destroy the profit on circulation. The

⁸⁶ U. S. Rev. Statutes, sec. 5159.

banks of the South and West found therefore in the privilege of issue no inducement to enter the national system.³⁷

Secondly, the provisions of the state laws in regard to the character of the loans which may be made by the banks are more liberal than those contained in the national act. As has already been shown,³⁸ the state banks in nearly all cases are permitted to loan on real estate. Evidently, if the bank finds it to its profit to make such loans, other things being equal it will prefer the state system.³⁹

Finally, since credit is the life-blood of the banking business, that system of regulation which is superior in giving to its banks the confidence of the community will attract to itself the major part of the business, unless there are counteracting forces. It is in only a few states and there within a comparatively recent period that the state systems can compete with the national in this respect. Where, however, there are a large number of state banks and the supervision is of a high order, there seems little to choose

³⁷ The diminishing profit on national bank circulation has been discussed by many recent writers on banking and currency: White, "Money and Banking," p. 418 et seq.; "Report of the Monetary Commission," pp. 180-191, and by the late Prof. Dunbar, "The Bank Note Question." *Quar. Jour. Econ.*, Oct., 1892, p. 55.

³⁸ See ante, p. 50.

³⁹ In one other respect the state laws allow a freer extension of loans. The national act provides that "the total liabilities to any association of any person or of any company, corporation or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one-tenth part of the capital stock of such association actually paid in." (Rev. Stat's, sec. 5200). In most of the state laws there are somewhat similar restrictions, but usually the part of the capital which may be loaned to one person is larger than one-tenth. It does not seem, however, that this can be of very great influence in making organization under the state law desirable, since the national banks violate this part of the law with impunity. The Comptroller of the Currency in his report for 1900, p. xx, says: "On June 29, 1900, 1575 banks of the 3732 that were active on that date, constituting nearly two-fifths of the entire number of banks in the system, reported loans in excess of the limit allowed."

on this score between the two forms of organization. The rapid growth of state legislation designed to secure more effective control of the banking business, has undoubtedly contributed much to strengthen the state institutions by giving them better credit.

These then are the main factors which must be considered in attempting to understand the growth of state banks of large size as compared with that of national banks. It is to be noted that the importance of the first two considerations is largely determined by sectional conditions, since the rate of interest and the desirability of making real estate loans vary in different parts of the country. The last consideration is largely secondary, tending to intensify a preference proceeding from one of the other two. When for any reason a class of banks has obtained an ascendancy, the public becomes accustomed to them and use gives confidence. The following table will enable us to weigh the influence of each of these factors.

NUMBER OF LARGE STATE BANKS (*i. e.* THOSE HAVING A CAPITAL OF \$50,000 OR MORE) AND OF NATIONAL BANKS BY STATES FOR 1877, 1888 AND 1899.

States.	1877.		1888.		1899.	
	State B'ks, \$50,000+	National.	State B'ks, \$50,000+	National.	State B'ks, \$50,000+	National.
Maine	2	71	..	75	..	82
N. H.	1	46	1	49	..	52
Vt.	5	46	..	49	..	49
Mass. ....	..	237	..	253	..	250
Conn.	4	81	8	84	8	79
R. I.	15	62	10	60	6	56
Total N. E. States....	27	543	19	570	14	568
N. Y.	81	281	110	322	144	327
N. J.	12	69	..	85	21	108
Pa.	83	232	77	313	90	436
Md.	15	32	7	48	6	69
Del.	6	13	4	18	3	19
Total Eastern States.	197	627	198	786	264	959

States.	1877.		1888.		1899.	
	State B'ks, \$50,000+	National.	State B'ks, \$50,000+	National.	State B'ks, \$50,000+	National.
Va....	22	19	40	26	42	36
W. Va....	9	15	14	20	28	34
N. C....	3	15	10	18	16	29
S. C....	2	12	11	16	35	16
Ga....	24	12	27	24	71	27
Fla....	..	1	3	13	13	15
Ala....	6	10	8	21	34	26
Miss....	5	..	12	12	36	12
La....	9	7	6	13	18	20
Texas....	10	12	4	100	..	199
Ark....	1	2	5	7	23	7
Ky....	43	46	56	69	129	75
Tenn....	8	25	35	42	56	47
Tot. South- ern States.	142	176	231	381	501	543
Deducting Texas....	132	164	227	281	501	344
Ohio....	28	165	10	219	51a	255
Ind....	11	99	22	94	47	115
Ill....	30	144	29	182	69b	217
Mich....	24	80	54	109	108	80
Wis....	12	41	36	59	46	78
Minn....	7	31	32	56	35	69
Mo....	76	30	97	50	105	63
Iowa....	18	78	77	129	87	172
Total Mid- dle States.	206	668	357	898	548	1049
Kans....	12	15	57	160	26	98
Neb....	6	10	54	104	28	100
N. D....	{ ..	1	24	58	{ 3	23
S. D....		5	5	17		25
Mont....	..	2	..	9	5	21
Wyo....	..	2	2	9	..	11
N. M....	..	3	3	9	2	6
Col....	4	13	3	34	10	36
Okla....	..	..	..	..	..	8
Total West- ern States.	22	48	145	391	75	328
Wash....	..	..	2	24	14	31
Or....	..	1	7	27	15	28
Cal....	38	9	75	38	129	35
Ida....	..	1	1	7	4	9
Utah....	..	1	2	7	7	11
Nev....	2	..	2	2	5	1
Ariz....	..	..	4	1	2	5
Total Paci- fic States.	40	12	93	106	176	120
Total U. S.	634	2074	1043	3132	1578	3567

a Excludes savings banks.

b Includes savings banks.

NOTE.—The table is compiled from the official returns whenever accessible, otherwise from data contained in Homans' Bankers' Almanac. The number of national banks is for October of each year.

Grouping the states, we find a decided preference for the national system in the New England and Eastern States. The field is more equally divided in the Middle States while in the Southern and Pacific Groups the large state banks are in the majority. Lastly, the Western States have four times as many national as large state banks. It is quite clear that an explanation based solely on the lack of profit from note issue cannot satisfactorily account for such a distribution. The rate of interest is certainly as high in the Western States as in any other part of the country. If we enter the groups, the inadequacy of such a solution becomes still more manifest. California prefers the state system while Oregon and Washington, with higher interest rates, have invested the larger part of their banking capital in national banks. If the profit made on circulation were the controlling force the preference for the state systems would be in direct proportion to the rate of interest prevailing. It is by no means true, however, that the declining profit on note issue has not been a powerful factor in causing changes to the state systems. But this influence has rather been a negative one. As long as large profits could be made on circulation, the banks could afford to forego the advantages which might be obtained by incorporation under the state laws. This is well illustrated by the case of the Southern States. Until 1888, the national banks were in the majority in nearly every state in the South, but in 1899 the state banks were much the more numerous class.⁴⁰

Leaving out of count the great manufacturing states, if we arrange the other states of the Union according to their preference for the national as against the state systems we find that it is in almost exactly inverse ratio to their stage of economic development. Where the state as yet needs external credit for the exploitation of its agricultural resources the national bank is far more important than the large state bank. In North Dakota and South Dakota, for

⁴⁰ Excluding the Texas banks for reasons heretofore given.

example, the national bank has almost a complete monopoly of the field; the state banks being nearly all of less capital than \$50,000, while in Michigan, Missouri,⁴¹ California, and in nearly all the Southern States, the state systems are decidedly preferred by the larger banks. Wisconsin, Minnesota, Iowa, Kansas and Nebraska form an intermediate class in which the two systems divide the business more or less evenly.⁴²

That these differences are closely connected with variations in the profit which can be made on real estate loans seems evident. While the amount of such loans cannot be ascertained for many of these states, the obtainable data point to the fact that in the newer states lending on real security is not practised by the banks to any large extent. In Kansas only five per cent of the total loans of the state banks are on such security, while in California the banks

⁴¹ Mr. Thornton Cooke, in an article in the *Quar. Jour. Econ.*, Vol. xii, p. 72, "The Distribution of State Banks in the West," after examining the states of North Dakota, South Dakota, Kansas, Nebraska and Missouri, finds that in Missouri alone of these states is the state banking system preferred. He attributes this to the fact that the state banks became firmly established in Missouri while the national bank circulation was restricted. While the long existence of a system of banking has undoubtedly powerful influences, a wider study would have shown that Missouri is only a type of a whole group of states.

⁴² No particular stress is laid upon the exact order in which the states are placed. In some of them, the state banks are of a composite character, both receiving savings deposits and doing a commercial business. (See Appendix, p. 112). In such states the number of state banks is naturally somewhat larger proportionately than in those states where the two classes of banks are distinct and the savings banks are not included in state banks. There can be no question also that differences among the states in the banking laws and in the efficiency of their administration produce important results. Thus, the excellent system of state supervision in Michigan has promoted the growth of state banks. It is clear, however, that between such states as Georgia, Missouri and California on the one hand, and North and South Dakota on the other, there are fundamental dissimilarities, affecting their preference for the state banks, and transcending minor causes of inequality.

make over one-third of their loans on real property.⁴³ It is not without significance that it was not until 1899 that the laws of North Dakota permitted the state banks to make such investments of their money. Even now in Oklahoma, the law prohibits real estate loans by the banks. If in these states any considerable profit could be derived from business of this character such laws could not be passed in the face of the almost universal practise to the contrary in other states.⁴⁴

It is not difficult to understand why in a state largely dependent on external credit, banks find it little to their interest to make loans on real estate. In such sections the chief form of property for a considerable time is personal, consisting of animals, implements, etc. Especially is this the case where stock-raising is the typical industry. Land, in such localities has so slight a value that it has little importance as a security for loans. But even after land has acquired a commercial value, it cannot always be made the basis for the extension of bank credit. Whether it can or not will depend on the condition of the locality as to its dependence on external capital. There is an unfavorable balance of trade against every new and rapidly-developing community. Capital is being brought in and invested in improvements which will ultimately perhaps more than pay for themselves but cannot do so immediately. It is land that is offered as security for this credit. If the banks in such a locality attempt to supply this need they must settle the balance against the section and consequently will be stripped of so much of their reserves.

If a community has reached a stage where it is no longer dependent on capital from other sections or what amounts to the same thing, where it is no longer buying more than it is selling, the banks will no longer labor under the same

⁴³ See ante, p. 54. Note also the large real estate loans in Mo., Wis., etc.

⁴⁴ It has already been mentioned that in Wisconsin a banking law was defeated in 1898 because it restricted real estate loans.

disadvantage with respect to real estate loans. What A sends out will be compensated for by what B brings in. It is an old saying that banks cannot create capital and it finds its practical application at the present time in the inability of Western banks to make long-time loans on real estate.

There is also a positive reason for the preference exhibited in the newer states for the national bank—a reason closely connected with their need for external capital. The stock of national banks is probably a more attractive investment for Eastern capitalists than the stock of state banks. The Eastern investor is well acquainted with the provisions of the national bank act and little informed as to the state banking laws. Consequently the promoters of banks needing a larger capital than they can secure at home, organize under the national system because by so doing they can attract foreign investors. In his report for 1897 the Comptroller of the Currency analyzed the distribution of national bank shares. The following table shows the proportionate part held by non-residents for certain sections.

	Number of Shares held by		Percentage held
	Residents of the State.	Non-residents.	by Non-residents.
Southern States.....	556,483	115,169	20
Middle States.....	1,380,223	225,228	16
Western States.....	216,601	110,940	51
Pacific States.....	128,422	49,728	38

Also within the groups the less-developed states show a higher percentage of shares held by non-residents. California, for example, has less foreign investment in her national banks than any of the other states in the Pacific Group.

So far, then as the relative importance of the large state bank and the national bank is concerned, the states may be divided into three classes. In the first, comprising the New England and Eastern States together with Indiana, Ohio and Illinois, banking may be said to have reached a high degree of specialization so that banks of discount and

deposit confine themselves exclusively to loans on personal security.⁴⁵ The feature of this group of states is that manufacturing and commercial occupations are predominant. The banks are able to employ their funds fully in loaning on commercial paper. The agricultural states fall into two classes, in one of which the large state bank is preferred to the national bank because real estate loans can be profitably made, while in the other class, the national system is superior in numbers on account of the impossibility because of economic conditions of making long-time loans for permanent improvements.

A study of the effects produced by the recent amendments to the national bank act confirms the view that the decrease in the profit on circulation has not been the controlling factor in the growth of large state banks. The Act of March 14, 1900, lowered the minimum capital required for national banks in smaller towns to \$25,000 and eliminated almost entirely the effect of differing local rates of interest on the profit from note issue. The latter end was accomplished by raising the amount of circulation which might be issued from 90 to 100 per cent of the par value of the bonds deposited and by refunding a considerable part of the national debt at two per cent, thus furnishing a bond on which the premium would be considerably less than on any formerly used as a basis for note issue. Thus the difference between the cost of bonds and the circulation was reduced to almost nothing and consequently the profit on bank circulation was made very nearly as large in those sections where interest is high as in those where it is low. There has resulted a considerable increase in the circulation of the national banks of the South and West.⁴⁶

⁴⁵ It is by no means intended to imply that a whole group of states, or even a single state, is of a uniform type. There are, of course, agricultural sections in New York as well as in Missouri or N. Dakota, and so there are some state banks in New York, but agriculture is not the industry which gives form to the greater part of the banks.

⁴⁶ See Report of Comptroller of Currency, 1900, Vol. I, pp. 343, 344.

Two courses were open to the state banks, either to enter the national system and lose the advantage of lending on real estate or to remain state banks and forego the profit to be made on note issue. Since the profit on circulation was practically the same throughout the country, the relative gains of the national system in the various sections furnish an index to the valuation placed by the banks on the privilege of making loans on real property. The following table shows the result.⁴⁷

	State Banks with a Capital of \$25,000+ active, Jan. 1, 1900.	Nat. Banks Organized from March 14, 1900 to Sept. 30, 1901.
N. Y.	207	27
W. Va.	55	12
N. C.	25	8
Fla.	13	2
Ga.	95	6
Miss.	65	2
La.	31	7
	—	—
	284	37
Ill.	155	40
Mich.	157	9
Wis.	135	18
Minn.	57	28
Iowa.	207	53
Mo.	197	9
	—	—
	908	157
Kans.	84	21
Neb.	100	20
N. D.	12	12
S. D.	16	9
Okla.	6	37
	—	—
	218	99
California.	147	9

During the time the act has been in operation there has been in most parts of the country a steady betterment in

⁴⁷ The table is compiled from the state bank reports for the date nearest to Jan. 1, 1900, on which the banks reported. Only those states are included for which official returns were obtainable. The numbers of national banks organized are taken from the leaflet issued by the Comptroller of the Currency on Sept. 30, 1901.

business conditions, in consequence of which many new national banks would have been formed without legislation; but it is clearly true that to some extent banks have been induced to leave the state systems and organize under the national law. The noteworthy point is that the gains have been made in those states where the national bank was already strong. The newer states have transformed their \$25,000 state banks into national banks. Thus in North Dakota and South Dakota, of the twenty-one banks organized, twenty were of less capital than \$50,000 and the only reason seemingly that they were not in the national system before was that the capital requirement was too high. The states which formerly preferred the state system still prefer it. While there were 500 and more state banks in Missouri, Michigan and California of sufficient capital to organize as national banks if they had desired only twenty-seven new national banks have been formed. The same result is seen in the South, the national system has gained but little and that mostly in those states which formerly used national banks to a considerable extent.

It seems clear that the lack of profit on circulation has been a minor element in determining banks to go into the state system. Far more important is the power to loan on real estate, the ability to combine in one institution the functions of a savings bank and of a bank of discount and deposit. This is the fundamental cause for the growth of large state banks.

The future of state banking will depend on several things. In the first place, it is evident that if the profit on circulation is increased by Congressional legislation, the gain to be obtained may be sufficient to draw the larger state banks into the national system. At the present time, the increasing premium on the two per cent bonds is making note issue less profitable and it is difficult to see how, if the present plan of securing the notes by bond deposit is retained, any further changes in the law can give the banks more profit. If that system is abandoned, and a method of issu-

ing notes upon the basis of banking assets is adopted, the banks now operating under state charters may find it to their interest to give up the business of loaning on real security in order to obtain a greater gain from circulation. Whether they will do so or not will evidently depend upon the provisions of the new law. Until there are radical changes in the national bank act, the circulation privilege will not be a sufficient incentive to induce changes to the national system in the South and the more fully developed states of the West.

It seems likely that as such states as Kansas and Nebraska become less dependent on external credit for the development of their agricultural resources they will find their needs better met by banks which can loan on real estate. There are signs that this movement is in progress. In his report for 1899-1900 the Kansas Bank Commissioner says: "Believing there is no better security than a first mortgage on good Kansas land, where reasonable judgment is exercised with respect to the amount of the loan I have been disposed to favor this class of loans and have urged our banks to carry a reasonable amount of same . . . the amount of real estate loans held by our banks is gradually increasing, being \$300,000 greater at this time than at the date of my last report." The time is not perhaps far distant when the large state bank will dominate the banking business in such states as fully as it does in Georgia or in Missouri.

The Act of March 14, 1900, in so far as it drew into the national system banks formerly organized under state laws, had a tendency to weaken the forces making for the better regulation of state banking. The growth of state supervision has gone *pari passu* with the increase in the number of state banks; while there were few of such institutions it was only natural that their regulation should be more or less neglected. As they have increased they have become more and more the objects of legislative attention. It is not an accident that supervision reaches its highest devel-

opment in those states where the state banks are most numerous. With a further lowering of the capital minimum, the national system would probably absorb still more of the state banks in some states. The evolution of state supervision would thus receive a set-back. The question is thus raised whether it will be advisable to bring into the national system still smaller banks. The answer must depend on what conception is entertained of the function of national banks. If it is considered desirable to have a national system of supervision for as many banks as possible and this is regarded as the primary aim of legislation there seems no good reason why the very smallest banks should not be admitted into the system.

But the national bank is not only a bank of discount and deposit, it is also a bank of issue. Up to the present time we have been able to have small banks of issue because the safety of the note has been secured by the bond deposit. Before the introduction of this method of guarantee, in none of the states were the banks of issue of small capital.⁴⁸ To permit \$25,000 banks to issue a credit currency would probably be hazardous.⁴⁹

It was the invention of the bond deposit as a security for note issue which made it possible for the small bank to become a note-issuing bank; it is the failure of a bond-secured circulation to supply the needs of the country which makes it impossible for the small bank to continue as a note-issuing bank. If the national bank is to be considered primarily as a bank of circulation, and it is to issue notes based on banking assets, the minimum capital seems already too low. It is a mistake to suppose that every bank of discount and deposit must also be a bank of issue. It is pertinent, therefore, in view of the urgent need of a reform in the method of note issue to ask why it would not

⁴⁸ They were either large independent banks, or branches of large banks.

⁴⁹ See Taylor, "The Object and Methods of Currency Reform in the United States," *Quar. Jour. Econ.*, Vol. XII, p. 307.

be best in future legislation to have a single eye to the one truly national function of the national bank and to leave to the state systems the regulation of all other banks. Already the states supervise savings banks, trust companies and such of the banks of discount and deposit as find their needs more fully met than under the national system. It has been shown in the first part of the present essay how promptly and efficiently the state legislatures have responded to the need for bank supervision. That they could be safely trusted with the control of whatever banks it was thought best to exclude from the national system is certain. The smaller banks remaining national are a hindrance to the better regulation of the banking currency; in the state systems they would give added impetus toward better state supervision.

APPENDIX

EXPLANATORY NOTE.

The accompanying table, showing the number of state banks by years and states, is based on three sources of information:

- I. Reports of the Comptroller of the Currency.
- II. Reports by state banking officials.
- III. Unofficial statements.
 - (a) "Homans' Bankers' Almanac and Register."
 - (b) "Rand and McNally's Bankers' Guide."

I. REPORTS OF THE COMPTROLLER OF THE CURRENCY.

The first official attempt to collect statistics of banking for the whole country was made in 1833 under a resolution passed by the House of Representatives on July 10, 1832. From that time until 1863, with the exception of some few years, the Secretary of the Treasury regularly included in his reports information regarding the number of state banks in the United States. In his annual report for 1863, Secretary Chase recommended the discontinuance of the practise, and no further information with regard to state banks was given in the succeeding reports of the Treasury Department. By act of Congress in 1873,¹ the Comptroller of the Currency was required to report to Congress, "a statement exhibiting under appropriate heads the resources and liabilities of the banks, banking companies and savings banks organized under the laws of the several states and territories, such information to be obtained from the reports made by such banks, banking companies and sav-

¹ Rev. Stats. of the U. S., sec. 333.

ings banks to the legislatures or officers of the different states and territories, and where such reports cannot be obtained, the deficiency to be supplied from such other sources as may be available."

Until 1887, the Comptroller included in the tables of state banks only those banks which made returns to some state official.² These statistics were reported to the Comptroller by the authorities in the various states. From 1887 to the present time, information has been gathered by direct correspondence, concerning banks located in states whose laws require no reports. The fullness of these returns has depended entirely on the disposition of the banks to give the information asked for. As a matter of fact only a few banks have made the reports. The statistics contained in the Comptroller's Reports, in so far as they are based on unofficial data are therefore quite incomplete.

From 1875 to 1882 the reports of the banks to the Commissioner of Internal Revenue, given as a tax return, were tabulated by the Comptroller and included in his reports. It was only in the summaries for 1880, 1881 and 1882 that the numbers of private, state and savings banks were shown by states. Since the repeal of the law imposing an internal revenue tax on banks no complete official enumeration of banks other than national has been made.³

II. REPORTS BY STATE OFFICIALS.

The state reports are the primary source of information with regard to state banks. They are compiled from returns made by the banks under law and consequently are entirely accurate. The statistics contained in the Com-

² There was a sporadic attempt in 1876 to gather information as to other banks, but it was abandoned in 1877.

³ The internal revenue law of 1898 imposed again a tax on banks and afforded an opportunity for the compilation of a similar table. and this has ostensibly been done (Report of Comptroller of Currency, 1900, Vol. I, pp. 297-300), but in reality private and state banks are inextricably confused.

troller's reports are valuable only in so far as they are based on the state reports.

In the compilation of the accompanying tables the state reports have been used to correct and supplement the figures given by the Comptroller of the Currency in the following ways:

(1) In some cases, when official statistics as to the number of state banks were obtainable, they have not been used by the Comptroller. For example, since 1891 state banks in West Virginia have been required to make reports to the State Auditor. The number of state banks in West Virginia are thus given by the Comptroller and by the Auditor:

	Comptroller's Report.	Auditor's Report.
1891.....	19	42
1892.....	27	45
1893.....	45	55
1894.....	26	56
1895.....	58	58
1896.....	59	60
1897.....	66	68
1898.....	41	74
1899.....	75	75

Evidently for several of these years the Comptroller, for some reason, has not availed himself of the information collected by the state authorities, but has relied on incomplete voluntary returns. Wherever, as in this case, a discrepancy has been found between the numbers given in official state reports and those in the Comptroller's reports the former have been used.

(2) In several states the returns of private and state banks as given by the Comptroller are not separated. It has been found possible in most cases by resorting to the state reports to remedy this defect. In Mississippi, however, a few private banks are included in the number of state banks as given in the table.

(3) The Comptroller's office has pursued a varying policy with regard to the classification of stock savings banks in Iowa and Michigan. Until 1886, all banks in Michigan operating under state charters were classed as state banks but in that year they were divided into state and savings banks. Again in 1887 they were all reported as state banks, but in 1888 the division was again made and retained until 1893. Since that time the early method of classing them together as state banks has been followed. The banks of Michigan are nearly all banks of discount and deposit, many of which carry on in addition a savings bank business. Whatever classification is made of them should be a uniform one, and it has seemed most in accordance with the facts to consider them all as state banks. Consequently the numbers for 1886, 1888, 1889, 1890, 1891, 1892 given in the Comptroller's reports have not been used in the tables but the numbers given by the Bank Commissioner of Michigan for all state banks have been substituted for them. A similar situation presented itself in the case of the Iowa banks. Since 1875 savings and state banks have been classed separately by the state officials. Until 1886 they were grouped together as state banks by the Comptroller but after that time they were separated. The numbers given for the earlier years by the Comptroller have been replaced in the table by those of the State Auditor.⁴

In many cases the official reports do not separate stock savings banks and state banks.⁵ The amount of this confusion may however be defined. According to "Rand and McNally's Bankers' Guide" for 1899, there were in the

⁴ Since the Auditor's reports up to 1887 were biennial, returns are only obtainable for alternate years; the intervening years have been filled by taking an average of the preceding and succeeding numbers. This method of interpolation has been used in several other places in the table.

⁵ This is true also of "Homans' Bankers' Almanac," the use of which in the preparation of the table is explained below.

United States in that year 1331 savings banks of all kinds. Of these, none of the mutual savings banks of the New England States, N. Y., Pa., Del. and Md., amounting to 663 banks are included in the table as state banks. Also in the following states the stock savings banks are excluded from the enumeration of state banks: Fla., Col., Iowa, La., Minn., N. C., Texas, Utah and Ill. These amount to 308 banks. So that of 1331 savings banks 360 are classed with the state banks in the table. There are very few savings banks in the Southern and Western States. The states in which the number of savings banks which cannot be separated is largest are Pa.,⁶ Ohio., Mich., Wis. and Mo. In the last three states there are no distinct savings banks.⁷ Many of the state banks combine the functions of savings banks and of banks for discount and deposit. To some of them the savings bank business is important, but in the greater number it is subsidiary.

III. UNOFFICIAL STATEMENTS

Even after the statistics given by the Comptroller have been supplemented and corrected as far as possible by the official state reports, there still remains a considerable number of states for the banks of which official information is lacking either for all or a part of the period 1877-1899. As has been said before, the Comptroller since 1887 has collected statistics for such states by direct communication with the banks, but he has secured returns from such a small part of the banks that the information given is of no value in determining the number of banks.

In order to fill in these gaps unofficial data have been used in the preparation of the table. Since 1873 "Homans' Bankers' Almanac and Register" has given annually the number of state banks in each state. There are reasons for believing that the numbers given by "Homans'" are ap-

⁶ Stock savings banks.

⁷ There is one such bank in Wisconsin.

proximately correct. They closely correspond for the years 1880, 1881, 1882 with the numbers contained in the official enumeration made by the Commissioner of Internal Revenue. The substantial accuracy of the "Homans'" statistics is also indicated by the fact that whenever a state has adopted a system of bank supervision the exact returns thus obtained show that the "Homans'" figures for previous years were very nearly correct.

The table showing the number of private banks by years and states has been made up entirely from data contained in "Homans'." Official statistics of the number of private banks can be obtained for only a few states, and with regard to those for only a short period. It has seemed best, therefore, to use throughout the unofficial information.

NUMBER OF STATE BANKS BY STATES FOR EACH YEAR FROM 1877 TO 1899.

States.	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887	1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899	
Maine	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
New Hampshire.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
Vermont	5	5	5	5	5	6	6	6	7	8	8	8	8	8	8	8	8	8	8	8	8	8	8	
Massachusetts	15	15	14	14	14	14	13	13	10	10	10	10	10	10	9	9	9	8	8	8	8	8	8	
Rhode Island	4	4	4	4	4	4	4	4	6	6	6	6	8	8	8	8	8	8	8	8	8	8	8	
Connecticut																								
Total N. E. States	27	26	24	24	25	24	28	24	25	27	19	19	18	18	16	14	14	14	14	14	14	14	22	
New York	81	75	71	66	70	74	82	87	92	92	102	122	145	164	176	190	201	205	213	216	213	210	207	
New Jersey	12	10	10	8	7	6	7	7	9	10	8	8	13	21	22	22	21	21	21	21	21	21	21	
Pennsylvania	113	106	88	88	82	81	81	79	81	80	77	82	84	82	85	80	79	83	87	90	90	90	90	
Maryland	15	14	13	10	8	10	10	10	10	10	8	9	10	8	7	8	6	6	9	10	12	12	12	
Delaware	a6	a7	a5	b4	b3																			
Total Eastern States	227	212	187	177	171	175	184	187	196	195	202	220	253	279	293	306	318	316	326	334	337	337	333	
Virginia	a40	a46	a44	a44	a44	a44	a44	a41	a38	a35	a55	a64	67	76	93	90	90	84	85	86	85	86	85	89
West Virginia	a15	a15	a15	a15	a15	a14	a16	a17	a16	a17	a18	a25	a26	a26	a29	a32	a42	a45	a55	a58	a60	a68	a74	a75
North Carolina	a3	a5	a5	a5	a5	a2	a4	a6	a7	a9	a11	a16	a16	a16	a20	a21	a29	a32	a33	a36	a41	a45	a44	a45
South Carolina	4	a8	a5	a4	a2	a4	3	a5	a7	a15	a19	a28	a45	a57	a67	a70	a67	a68	a78	a78	a78	a78	a81	
Georgia	a27	a29	a26	a26	a26	a21	a18	a17	a21	a21	a20	a23	a31	a47	a66	a87	a108	a111	a111	a111	a111	a119	a139	
Florida .....	..	..	..	..	..	a1	a2	a3	a4	a4	b6	b15	b15	b15	b15	b11	b18	b19	b21	b23	b20	b23	b23
Alabama	a6	a7	a7	a7	a6	a5	a5	a5	a8	a6	a9	a20	a30	a39	a44	a44	a39	a33	a42	a40	a42	a42	a42	
Mississippi	a7	a7	a7	a6	a8	a8	a8	a9	a8	a9	a11	a11	a15	30	47	54	55	63	55	64	75	83	86	92
Louisiana	a9	10	10	10	10	4	4	4	a6	a5	6	6	11	11	16	18	22	27	38	a39	a51	50	50	
Texas	a13	a17	a15	a14	a12	a12	a12	a14	a15	a13	9	a7	5	4	4	4	4	3	8	a6	4	3	0	
Arkansas	a1	a2	a3	a3	a4	a3	a2	a3	a4	a10	a13	a23	a40	a52	a61	a63	a63	a64	a82	a81	a79	a86	a86	
Kentucky	54	51	49	55	61	60	65	68	69	72	71	83	106	123	151	162	164	161	171	a167	a188	a192	a216	
Tennessee	a18	a18	a17	a17	a17	a16	a15	a15	a19	a22	a37	a43	a77	a100	a117	a124	a123	a113	a135	a134	a132	a139	a139	
Total Southern States	197	213	203	206	201	194	197	206	219	228	282	336	464	605	751	819	851	825	856	940	980	1012	1077	

(115)

c Average of preceding and succeeding years.

158

All others from reports of Comptroller of Currency.

NUMBER OF PRIVATE BANKS BY STATES FOR EACH YEAR FROM 1877 TO 1899.

States.	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887	1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899
Maine	8	8	9	11	11	10	12	14	15	12	13	13	15	15	13	10	11	8	8	8	8	8	8
New Hampshire..	2	3	4	4	4	3	1	3	3	3	3	6	5	4	4	4	3	2	2	2	2	2	2
Vermont.....	1	4	3	3	3	2	1	2	3	2	2	2	3	4	4	4	3	2	1	1	1	1	1
Massachusetts..	52	58	62	70	70	67	75	69	71	77	74	77	73	72	75	72	79	162	165	166	166	160	160
Rhode Island...	5	5	5	6	7	6	8	8	7	7	7	8	10	11	11	11	10	9	5	5	6	11	11
Connecticut....	14	18	15	18	16	19	16	22	21	19	28	19	19	23	21	22	21	22	22	19	20	18	16
Totals	82	96	97	109	110	109	110	114	118	116	132	117	125	131	128	128	128	128	120	125	197	201	198
N. Y. (State) ...	201	193	198	184	182	186	179	168	160	163	172	179	168	168	163	163	164	153	149	138	138	139	136
N. Y. (City) ...	88	102	69	68	69	65	68	66	67	75	74	77	77	77	75	75	75	176	328	182	180	182	182
New Jersey....	10	8	8	6	6	7	6	6	6	6	6	6	7	7	5	6	7	8	8	5	5	5	4
Pennsylvania...	306	316	295	285	269	294	260	247	233	247	243	243	248	248	269	268	260	233	221	308	311	302	316
Maryland	23	23	20	21	22	27	32	38	16	37	19	19	23	21	37	36	46	52	34	10	10	11	43
Delaware.....	3	7	3	3	3	3	4	4	3	3	3	3	3	3	3	3	3	3	4	3	3	3	4
Totals	631	649	593	567	551	582	549	485	531	517	527	524	625	652	655	647	625	744	646	647	642	642	813
Virginia	30	26	32	33	34	41	42	6	42	42	49	28	30	30	31	33	29	31	28	29	28	29	27
W. Virginia....	8	11	11	7	5	5	5	6	5	15	15	5	3	3	5	4	6	9	9	23	10	6	5
N. Carolina....	9	10	8	9	12	11	17	14	22	16	18	23	24	26	25	25	21	25	25	24	26	27	24
S. Carolina....	19	23	22	18	15	20	19	20	22	21	24	22	27	31	31	33	33	33	30	26	21	20	19
Georgia	39	47	45	40	50	57	58	67	68	70	71	60	53	55	52	56	53	63	40	41	43	42	42
Alabama.....	17	23	23	23	27	32	35	36	39	44	49	51	46	47	43	41	37	41	34	31	33	34	34
Mississippi...	21	18	24	25	23	21	22	18	17	15	17	16	16	16	14	14	12	11	4	4	4	5	4
Louisiana....	7	9	9	8	10	13	13	15	15	15	14	14	14	10	18	15	15	15	12	6	6	6	8
Texas	73	78	79	85	98	124	123	122	116	112	120	130	138	148	145	127	133	128	131	153	147	165	187
Tennessee....	10	13	14	14	14	15	15	15	18	18	19	20	20	24	35	30	32	33	29	7	8	6	9
Kentucky....	36	36	30	31	33	35	34	34	36	32	39	36	43	42	42	42	37	22	21	25	22	21	22
Arkansas....	12	11	10	9	10	14	19	19	17	18	18	20	30	27	27	24	23	19	19	15	18	11	14
Florida.....	8	9	8	7	7	9	9	17	19	10	27	27	24	23	19	20	22	22	19	11	12	13	11
Totals	289	314	315	308	335	388	411	428	411	414	446	460	479	496	491	455	469	464	450	368	362	399	416

States.	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887	1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899
Ohio	219	235	225	227	231	234	237	243	238	243	250	254	264	271	263	265	253	245	262	260	268	287	
Indiana	111	119	118	113	114	122	134	135	126	124	149	156	170	177	181	187	197	182	180	204	209	213	223
Illinois	282	295	305	321	331	337	374	394	405	432	441	455	449	511	535	548	541	540	567	560	562	599	599
Michigan	131	140	138	140	151	159	174	184	192	197	217	220	228	232	227	222	219	218	236	235	241	249	
Wisconsin	70	75	73	80	88	94	97	103	104	107	114	102	119	110	104	110	100	108	106	104	111	120	
Minnesota	49	51	58	60	89	95	124	129	137	145	152	163	172	182	166	175	177	175	204	205	214	239	
Iowa	201	232	252	264	289	380	353	373	383	388	411	423	456	485	482	478	474	460	464	477	477	490	519
Missouri	104	107	105	83	94	96	97	128	111	132	129	122	141	152	143	124	139	131	130	114	107	107	110
Totals	1167	1254	1274	1288	1387	1517	1590	1689	1678	1728	1840	1866	1986	2041	2101	2085	2132	2063	2170	2157	2206	2345	
N. Dakota	8	10	10	10	31	48	97	136	140	162	183	196	205	62	38	30	19	14	14	14	0	1	2
S. Dakota	146	127	66	64	58	48	48	47	52	57
Nebraska	30	36	43	60	92	113	140	147	185	229	278	306	297	244	192	165	155	143	132	81	79	65	
Kansas	84	75	90	108	137	160	194	211	247	303	353	365	343	327	253	208	190	171	148	113	118	96	
Montana	5	7	6	8	11	12	17	15	14	13	10	11	15	16	22	19	19	14	16	18	17	21	
Wyoming	25	23	22	25	50	49	51	47	43	53	65	69	73	70	58	56	58	44	50	52	55	48	
Colorado	4	5	5	7	10	13	20	16	13	11	10	10	9	9	8	9	8	9	12	12	12		
New Mexico .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	4	5	5	7
Oklahoma .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	21	20	4	1
Totals	161	162	181	223	336	400	528	581	651	780	911	969	952	884	709	527	530	479	440	346	350	309	301
Washington	2	4	3	2	8	14	11	10	10	11	11	14	34	36	38	35	31	9	17	15	17	19	24
Oregon	6	7	7	8	9	14	16	21	22	21	22	25	22	24	24	26	20	17	13	15	16	20	
California	65	72	48	39	41	49	51	47	46	48	52	55	37	43	32	35	32	32	35	32	30	29	
Idaho	3	3	4	5	4	8	11	13	11	13	16	13	11	13	12	10	15	11	11	13	9		
Utah	7	7	8	9	11	12	11	9	8	8	9	13	21	11	11	10	12	13	13	13	11		
Nevada	18	16	13	13	7	11	10	13	11	13	11	10	8	6	7	6	3	3	3	3	2		
Arizona	1	2	2	2	2	2	4	7	2	4	4	4	5	3	3	4	5	5	3	..	1	..	
Totals	102	111	85	78	80	111	118	117	113	120	120	125	149	128	149	124	125	93	105	83	89	96	95
Total for United States ..	2432	3586	2545	2573	2799	3107	3306	3458	3456	3689	3966	4064	4230	4305	4230	3974	4031	3844	3924	3810	3806	3853	4168

INTERNAL IMPROVEMENTS
IN ALABAMA

SERIES XX

No. 4

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

(Edited 1882-1901 by H. B. Adams.)

J. H. HOLLANDER J. M. VINCENT W. W. WILLOUGHBY
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INTERNAL IMPROVEMENTS IN ALABAMA

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BALTIMORE
THE JOHNS HOPKINS PRESS
PUBLISHED MONTHLY
APRIL, 1902¹

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JOHNS HOPKINS PRESS

The Lord Baltimore Press
THE FRIEDENWALD COMPANY
BALTIMORE, MD.

PREFACE

This paper is an effort to trace the development of the public highways of Alabama, and to point out their influence upon immigration and settlement. It indicates briefly what has been done within the state by the Federal Government in improving rivers and harbors and in aiding the construction of railroads; and discusses finally the policy of Alabama respecting public aid to such works.

I wish to acknowledge my indebtedness to the late Professor Herbert B. Adams and to Professor J. M. Vincent, from both of whom I received helpful instruction in the methods of historical study; also to Dr. J. C. Ballagh for the suggestion of this topic and for his continued interest during the progress of the work.

JOHNS HOPKINS UNIVERSITY,
June, 1901.

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INTERNAL IMPROVEMENTS IN ALABAMA

CHAPTER I

THE DEVELOPMENT OF HIGHWAYS

INDIAN PATHS.

From Indian trails to trade routes, from trade routes to pioneer roads has been the line of evolution along which the public highways of Alabama have developed. When the curtain of Alabama's history first rises the Cherokee Indians were dwelling in their mountain homes in the northeastern portion of the state. West and southwest of the Cherokees were the Chicasas whose territory included the greater part of the Tennessee Valley, embracing the northwestern tier of the present counties of Alabama, reaching westward as far as the headwaters of the Yazoo River in the state of Mississippi.

The western and southwestern portions of the state were occupied by the Choctaws, "The Maubilians with whom De Soto came in collision on the lower Alabama and the Tuskaloosa, and partly exterminated."¹ Their territory, reaching westward from the Tombigbee River, covered all that part of the present state of Mississippi which lies south of latitude 33° 30'.

East of the Choctaws were the Muscogees or Creeks. "When first known to the white colonists," says Brewer, "this domain stretched from the Tombigbee to the Atlantic, but they were gradually driven west of the Ocmulgee and Flint. Their principal towns were on the Talla-

¹ Brewer, Alabama, p. 16.

poosa and Chattahoochee. Their war trail extended to the Mobile Bay and the Florida Everglades." "The Hillabees," the same author continues, "Autaugas, Cussetas, Eufaulas, Ocfuskees, Uchees, etc., were names which attached to the Muscogees residing in those towns."²

We thus have a general line of Confederate Creek³ towns, dotting the territory of Alabama and Georgia, the most easterly of them being located on the site of the present city of Augusta.⁴ Each town had its own "Micco" or King, but there was a Grand Chief of the Confederation, who presided over the National Councils and led them to battle. The capital of the nation was Tookabatcha, on the Tallapoosa River, a few miles above its confluence with the Coosa, and here the chiefs and representatives of all the towns gathered annually, in May, to consult on matters of general interest. The towns were brought in touch also by social features, it being a regular custom, for example, for warriors of one town to challenge those of another for a game of ball, their national amusement. The challenge having been accepted, the contestants would repair to the appointed spot, followed by throngs of their respective townsmen, and the battle would be fought amid the shouts of their enthusiastic spectators. This constant contact, town with town, not only resulted in a network of paths running from village to village, uniting the "Upper Creeks" on the Coosa and the Tallapoosa rivers with the "Lower Creeks" on the Chattahoochee, but also produced a well beaten, clearly marked line of communication from the eastern boundaries of Georgia to the west-

² To gather in village communities was characteristic of the Creek Indians. Thus, Bartram in his *Travels* (p. 462), tells us that there were in 1777 "Fifty-five towns, beside many villages not enumerated."

³ The Muscogee Indians were all called "Creeks" by the English explorers and traders on account of the many beautiful rivers and streams which flowed through their extensive domain. Pickett, vol. i, p. 29.

⁴ Pickett, vol i, p. 81.

ern portions of Alabama. This main path, known as the "Southern Trail" led in early times probably from the site of the present Augusta, crossing the Oconee River just below Milledgeville, striking the Ocmulgee at the foot of the Ocmulgee fields,⁵ proceeding westward to Coweta (near Columbus) where the Chattahoochee was crossed, thence across the Tallapoosa at Tookabatcha, then almost due west to the Coosa, then up the river to "Coosa Old Town" (in the fork of the Talladega and Kiamulgee Creeks) and from here moving westward across the Cahaba River near Cahaba Old Town and thence into the settlements along the Tombigbee, and running still further to the northwest reaching the Chicasas in northwest Alabama and northeast Mississippi. From Coosa there was also a trail running southwestwardly into the Mobile Country.⁶

Another route leading from the Georgia Country, called the "High Town Path," "started from High Shoals on Apolachi River, which is the southern branch of the Okone River, and went almost due west to 'Shallow Ford' of Chattahuchi River, about twelve miles north of Atlanta, Georgia, in the river bend."⁷

Continuing, the trail led to High Town or Etowah, and the other towns bordering on the Cherokee district and finally reached the Chicasa Country. There were many other similar paths but for our purpose these are the two most important, as the traders from the Carolinas and Georgia followed this general system of paths in penetrating the interior of Alabama and reaching the various Indian tribes with their wares.

⁵ Bartram, *Travels*, p. 52. These fields were about 70 or 80 miles above the confluence of the Oconee and Ocmulgee rivers.

⁶ See map in *American Gazetteer*, vol i, London, 1762. Reproduced in Winsor's *Westward Movement*, p. 31.

⁷ Gatschet, *Migration Legend of the Creek Indians*, p. 151. Here the path is called "High Tower Path," but should be as above, as is shown in Carey's *American Atlas* (Philadelphia, 1795). Reproduced in Winsor's *Westward Movement*, p. 383. The path was so called from the village "High Town," the most northerly town of the Creeks.

TRADING ROADS.

In 1702 the French established on the Mobile Bay, at the mouth of Dog River, "Fort St. Louis de la Mobile," the first white settlement ever made in what is now Alabama. These French Colonists, anxious to gain the friendship of all the Indians on the Mobile River and its tributaries, proceeded at once to send out emissaries that treaties of peace and trade might be made. This point, Mobile,⁸ early became the capital of French-America. Their plan was to form a strong line of forts,⁹ along the Mississippi Valley, from the Gulf to the Great Lakes, and thus prepare themselves to resist the pressure of the expansive English, and to control the trade of the Indians.

But the colonists of Carolina, as is characteristic of the English stock, had already heard "the voice of duty," had already taken up the "white man's burden" and were carrying some of the "blessings of civilization" to these Indian tribes. These pioneer traders had two paths, one leading from Charleston by the Indian town Keowee (near the source of the Savannah River and where Fort Prince George was built in 1755) thence westward along the ridge dividing the tributaries of the Tennessee and Savannah Rivers, thus practically following the boundaries between the Creek and Cherokee towns, and then following at will the "High Town Path," already described, and leading ultimately into the Chicasa Country.

Another route, and the one most formidable to French interests, was the old Indian trail mentioned above as the

⁸ In 1711 the fort was moved further up the bay to the mouth of Mobile river, thus establishing the present site of Mobile.

⁹ Among others may be mentioned Fort Toulouse, established in 1714, at the confluence of the Coosa and Tallapoosa; Fort Tombecbe, in 1735 on the Little Tombigbee river, at what is now Jones' Bluff; Fort Assumption, on the Chicasa Bluff, now Memphis, here a trading post was established by LaSalle as early as 1673; Fort Duquesne, at the mouth of the Monongahela, near Pittsburg, in 1754.

“Southern Trail” and which Bartram in his “Travels” calls the “Great Trading Path.” At a very early date the Carolinians had established Fort Moore, near where the present Augusta, Georgia, is situated, as a frontier trading post. Hard by, on the same river, was Silver Bluff, “A pleasant villa, the property and seat of G. Golphen, Esquire, a gentleman of very distinguished talents and great liberality, who possessed the most extensive trade, connections and influence, amongst the south and southwest Indian tribes, particularly with the Creeks and Choctaws.”¹⁰ This being the site of an old Creek town, as already mentioned, and being the terminal point of the old Creek trail, accounts in a measure for the location of these three points. Along this trail the traders and emissaries from Carolina pushed their way into the Creek Country, and the Georgians after the founding of their colony in 1732, at once proceeded to add to their numbers in pushing the Red Man westward and following him with their wares.

The French usually carried on their trade from Mobile by river; there was, however, a land route to Fort Toulouse.¹¹ There was also a good road running through the Choctaw Country west of, and not far from the Tombigbee and Mobile rivers by which the Choctaws traded with the French. Another road ran from Mobile to the Chickasaw towns.¹² There were, likewise, routes by which the traders from Pensacola reached the Choctaws and Creeks.

These main routes, intersected as they were by many hunting paths, were not easily followed by any but a “good

¹⁰ Bartram, p. 312.

¹¹ Fort Toulouse was built by Bienville in 1714, near the junction of the Coosa and Tallapoosa rivers, a strategic position for controlling the Indian trade. Upon its abandoned site was erected Fort Jackson a century later. To checkmate this French move the Georgia colonists built a stockade about forty miles further up on the Tallapoosa, and this fort, Ocfuskee, for several years served as the rendezvous of the British traders. Pickett, Alabama. Adair, American Indians.

¹² Dow’s Life and Works, p. 101.

woodsman" as the pioneer Methodist preacher, Lorenzo Dow, notes of his trip in 1803 from the Oconee River to the Natchez Country. Although he had provided himself with a map and with a compass he frequently lost his way, the one on whom he "depended as guide knowing nothing about the roads." The distance of four hundred miles from the Oconee to the Alabama Rivers he made in thirteen and a half days.

In 1776 the English botanist, Bartram, joined a company of traders in Georgia, and with them made the trip through the Creek Country to Mobile. Of this he gives us an interesting sketch,¹⁸ from which we may gather some idea as to the modes of travel along these roads. The band, consisting of twenty men and sixty horses, fording the Oconee, the Ocmulgee, and the Flint, pushed westward to the Chattahoochee at Uchee Town (near the present Columbus) where the Indians carried their goods across in canoes. Then the traders dispersed among the Indian towns while Bartram wended his way to Mobile. Passing Coolome, a trading center near the junction of the Coosa and Tallapoosa, he moved along parallel with the Alabama near the present site of Montgomery. Here the trail bears away to the south, leaving the Alabama at some distance, crossing the head waters of the "Schambe" (Escambia) River and finally reaching Taensa about thirty miles above "Fort Conde" or "City of Mobile."

He returned in November, 1777, by practically the same route, with another trading band consisting of the "chief trader," two packhorsemen, with twenty to thirty horses, sixteen of which were alternately loaded with packs of one hundred and fifty pounds each. "They seldom decamp," the author declares, "until the sun is high and hot; each one having a whip of the toughest cow skin, they start all at once, the horses having ranged themselves in regular Indian file,—then the chief drives with the crack

¹⁸ Bartram's *Travels*, pp. 372-461.

of his whip and a whoop or shriek, which rings through the forests and plains—when we start all at once, keeping up a brisk and constant trot, which is incessantly urged and continued as long as the miserable creatures are able to move forward,—every horse has a bell on which being stopped when we start in the morning with a twist of grass or leaves, soon shakes out and they are never stopped again during the day. The constant ringing of the bells, smacking of whips, whooping, and too frequent cursing these miserable quadrupeds cause an incessant uproar and confusion inexpressibly disagreeable.” The merchandise was conveyed across the swollen streams on rude rafts made of trunks of trees and bundles of cane bound together by vines and withes. A narrower stream they would cross by a “sapling felled across it, which is called a raccoon bridge.” Over this the traders could lightly trip with a load of a hundred pounds, while Bartram “was scarcely able to shuffle himself along over it astride.” “A portable leather boat about eight feet long, of thick sole-leather, folded up and carried” on their horses was another device these traders employed in crossing streams. These boats with the help of a few saplings for “keels and gunwhales” could be rigged up in half an hour and would carry “ten horse loads” according to Adair. The latter tells us that “few take the trouble to paddle the canoe, for as they are commonly hardy and also of an amphibious nature, they usually jump into the river and thrust it through the deep part of the water to the opposite shore.”¹⁴

FEDERAL ROADS.

The clauses in the Constitution of the United States which empower the Federal Congress “To provide for the Common Defense and general Welfare” of the nation

¹⁴ Adair, *American Indians*, London, 1775.

Adair was an English trader who resided for forty years among the Creeks and long held them to the English side in spite of the efforts of the French.

and "To establish Post Offices and Post Roads," subject as they have been to very elastic interpretations, form the basis upon which have been founded the policy and practice of internal improvements by the Federal Government. We find that James Madison in 1796 advocated the examination and survey of a "general route most proper for the transportation of the mail from Maine to Georgia."¹⁵

By act of May 17, 1796, it was declared that "three tracts of land, not exceeding one mile square each" should be granted to Ebenezer Zane for opening a road from Wheeling to Limestone (Maysville, Kentucky) and for the establishment of ferries over the Muskingum, Hocking, and Scioto Rivers.¹⁶ This road, as will be seen, lay throughout its entire length in territorial lands, and was the first item of internal improvement to receive aid from the Federal Government. "From that day to the present" (1824), says Benton, "Congress has been making these roads without reference to the Constitution, because universally held that the Constitution did not extend to territories. In my thirty-two years of congressional service I can well say, I never heard a question raised about the right of Congress to make in the territories the local improvements which it pleased. I have seen members of all political schools constantly voting for such objects—the strict constructionist generally inquiring if the road was limited to the territory, and voting for the bill if it was."¹⁷

The theory was that no state sovereignty would thus be infringed upon. Territories are the "property of Congress, subject only to the conditions upon which they were ceded by the states or foreign nations, and Congress acted with them without reference to the Constitution of the United States,"¹⁸ but according to the Territorial ordi-

¹⁵ Benton, *Debates of Congress*, vol. i, p. 637.

¹⁶ *United States Statutes at Large*.

¹⁷ Benton, *Debates of Congress*, vol. vii, p. 617.

¹⁸ *Ibid.*

nance of July 13, 1787, which had been given them by Congress and which the latter could modify.

Under Act of May 1, 1802, the Secretary of the Treasury was empowered to have "viewed, marked and opened such roads within the territory northwest of the Ohio as, in his opinion, will best serve to promote the sale of the public lands in the future."¹⁹ For this purpose six thousand dollars were appropriated from the moneys received from the sale of public lands.

Now if it is good for the "National welfare," to provide roads within a territory why is it not also advantageous to construct roads leading from the states into the territories? Immigration would thus be encouraged, values of public lands enhanced, and close commercial relations would develop a strong feeling of national unity. The step was easily made; and on March 29, 1806, came the Act authorizing the opening of a road from Cumberland, in Maryland, to the Ohio River in Ohio. For the opening of the road thirty thousand dollars were appropriated from the proceeds of public land sales. If the funds derived from the sale of public lands could thus be constitutionally applied why not any other funds in the treasury?

Thus was driven the entering wedge. The precedent was established, and gradually the strict constructionists surrendered their position as sticklers for the Constitution and joined the pell-mell rush, the game of grab. This, of course, developed at a much later period than the one with which we are now dealing; but we see that the idea was already in the public mind.

By 1800 the Spanish government had at last (in 1795) acceded to the claims of the United States to all the territory north of the thirty-first degree, Colonel Ellicott had marked this southern boundary line (in 1798-9), the Spanish garrisons had evacuated Fort St. Stephens²⁰ and Fort

¹⁹ United States Statutes at Large.

²⁰ Established by the Spanish about 1786.

Tombecbe²¹ (called by the Spanish Fort Confederation) and Congress (in 1798) had organized the Mississippi Territory. The white population of that part of the Mississippi Territory which afterwards became Alabama were confined to the settlements around Tensaw (near Nannahubba Island), St. Stephens, and Tombecbee.²² It consisted of those who had been stranded from the French colonies (who held the region till 1763), of those who remained from the Spanish colonies (who claimed and held these districts from 1783 to 1798) and of the few Americans who had filtered through the wilds from Georgia.²³ To protect these isolated colonists from the surrounding Indians and from the intriguing Spaniards just below them, and to encourage immigration into the territory the Federal Government soon proceeded to construct two roads, one leading into the Natchez settlement on the Mississippi River, and another leading into the settlement along the lower Alabama. On October 24, 1801, a treaty was made with the Chickasaw Indians (approved by the United States Senate May 1, 1802) by which a "wagon road" was allowed through their lands from "The Mero District in the State of Tennessee" to the Natchez settlements. For this privilege "The Commissioners of the United States give to the Mingco of the Chicasaws and the deputation of that nation goods to the value of seven hundred dollars."²⁴ On the

²¹ Established by the French in 1735. Near the present Jones' Bluff, Sumter County.

²² The population of the whole county of Washington, then extending from the Pearl to the Chattahoochee, was only 733 whites and 517 negroes. The population of what is now Mobile and Baldwin counties, then Spanish territory, was probably as large. Brewer's Alabama, p. 26.

²³ Bartram in 1777 speaks of meeting "A company of immigrants from Georgia; a man, his wife, a young woman, several young children and three stout young men, with about a dozen horses loaded with their property." He was informed that they were "to settle on the Alabama a few miles above the confluence of the Tombigbee." These were among the earliest immigrants to Alabama. Bartram's Travels, p. 441.

²⁴ United States Statutes at Large, vol. vii, p. 65.

17th of the following December a treaty was likewise secured by the same commissioners granting the right to continue this road through the lands of the Choctaws. For this concession the Choctaws were paid "the value of two thousand dollars in goods and merchandise, nett cost of Philadelphia,"²⁶ and "three sets of blacksmith's tools."

This road called the "Nashville to Natchez" road had been the line of an old Indian trail,²⁷ crossing the Tennessee River at Muscle Shoals where the United States by treaty of January 10, 1786, had obtained a grant of land for a trading post.²⁸ A treaty of November 14, 1805, granted the United States "the right to a horse path through the Creek Country from the Ocmulgee to the Mobile—and to clear out the same and lay logs over the creeks." The Indians were to provide boats at the several rivers for conveyance of men and horses, and also houses of entertainment for the accommodation of travelers; for all these accommodations the prices should be regulated by "the present Agent, Colonel Hawkins,²⁹ or by his successor in office." By act of April 21, 1806, appropriations were made for the opening of these two roads; six thousand dollars for the one from Nashville to Natchez, and six thousand four hundred dollars for the one from frontier of Georgia on the route to New Orleans to the intersection with 31° of north latitude.³⁰ Both were duly opened up

²⁶ *Ibid.*, p. 66.

²⁷ *History of Tennessee*, Phelan, pp. 171, 179, 277.

²⁸ *United States Statutes at Large*, vol. vii, p. 24.

²⁹ Colonel Benjamin Hawkins was appointed by President Jefferson as agent to the Creeks. He established what became known as the "Old Agency" at the point where the trade route crossed the Flint river. Around this settlement grew up the town Francisville, so called from Francis Bacon, who married the daughter of Colonel Hawkins, and who infused new life into the little settlement. After the completion of the railway from Columbus to Macon the business of Francisville was absorbed by other points, and the little town soon passed into oblivion. "Dead Towns of Georgia," in vol. iv of "Collections of Georgia Historical Society," p. 241.

³⁰ *United States Statutes at Large*.

and the former long continued the post road into the Natchez district, while the latter became the great thoroughfare of early Alabama.

Fort Stoddard was a post which had been built in 1799³⁰ by the Federal Government as a port of entry just above Ellicott's line (31°) and this became the terminal point of the Georgia-Alabama Road. From Fort Stoddard (the site of the present Mt. Vernon) the road crossed Mim's Ferry.³¹ Nannahubba Island and Hollinger's Ferry, then following, in general, the ridge which divides the tributaries of the Alabama from those of the Gulf (thus practically the line of the old trade route) to Columbus on the Chattahoochee. With these small appropriations the roads were merely blazed through the woods, though at once honored with the dignified title of "Federal Roads."

For the extension and improvement of these roads appropriations were made, from time to time, as follows:³²

For the Nashville-Natchez route;³³

Act of April 21, 1806.....	\$6,000
Act of April 27, 1816.....	5,000
Act of March 27, 1818.....	5,000
Act of March 3, 1823.....	7,920

For the Georgia-Alabama route;

Act of April 21, 1806.....	6,400
Act of February 17, 1809.....	5,000 ³⁴
Act of April 27, 1816.....	5,000 ³⁵

³⁰ Pickett, vol. ii, p. 179.

³¹ Established in 1797. Pickett, ii, p. 179; also Publications of Alabama Historical Society, vol. ii, p. 167.

³² Statutes at Large.

³³ This road was of more importance to Mississippi. Its influence upon the settlement of the northwest portions of Alabama will, however, warrant the above summary.

³⁴ The President, empowered by an Act of March 3, 1807, had obtained permission from Spain to continue the road from Fort Stoddard to New Orleans. For this purpose the above appropriation was made.

³⁵ The importance of a better road, affording better military connections with this section had been impressed on Congress by the recent events in the southwest during the closing days of the War of 1812. House Report 61, 13th Congress, 3rd session.

Act of March 27, 1818.....	\$ 5,000
Act of April 14, 1820.....	3,300
Act of May 20, 1826.....	6,000
Act of February 20, 1833.....	{ 2,000 20,000
Act of July 7, 1838.....	1,945.50

The Act of February 20, 1833, authorized the opening of a new post road through the Indian Country from Line Creek in Alabama to the Chattahoochee opposite Columbus. The three thousand dollars were to repair the old road (which had become well-nigh impassable, especially through the swampy lowlands during the winter season) for use till the new one could be put through. The President was authorized to employ a superintendent, upon an annual salary of a thousand dollars, who should supervise the construction of this new road. "To close the accounts for laying out and construction of this 'Mail Route' and to pay the 'balance due the contractor and workmen'" the appropriation of July 7, 1838, was made. The new road, called "The Upper Federal Road" was to the north of the old route, was on higher ground, and was generally used during the rainy season; the old road continued in use during open weather.

These amounts, together with three thousand dollars appropriated²⁶ "for the completion and improvement of the military road" from Pensacola by Blakely to Mobile, and one thousand one hundred and thirty-eight dollars for military road from Pensacola to Fort Mitchell, opened in 1824, sum up the federal aid to road building in Alabama.

Lieutenant McLeary, in 1799, had opened a rough military road from Natchez to St. Stephens when he marched across to take charge of the latter place after the evacuation of the Spaniards.²⁷ At an early date a road was cut from St. Stephens, crossing the Alabama at Claiborne, and

²⁶ Act March 2, 1829. *Statutes At Large.*

²⁷ Pickett, vol. xi, p. 179; *Publications of Alabama Historical Society*, vol. xi, p. 166.

joining the Federal road to the east. A horse path had been opened through the Chickasaw territory, intersecting the Nashville-Natchez road at Colbert's Ferry (Muscle Shoals);³⁸ the road from Georgia had been extended from Fort Stoddard to Natchez.³⁹

In 1805 was obtained the right to a road from "Tellico to Tombigbee" inasmuch as the "mail of the United States from Knoxville to New Orleans" had been "ordered to be carried through the Cherokee, Creek, and Choctaw countries."⁴⁰ On this road the little village of Huntsville began in 1806. It was known as the "Knoxville Road" and was of much importance in the settlement of the northern part of Alabama. Thus by 1810 the St. Stephens District was fairly well connected with the older states by rough, pioneer roads and immigrants began to flock in from all quarters. The principal immigrant route, however, was that from Georgia, through the Creek Country to Fort Stoddard. Along this route came settlers from Virginia, the Carolinas and Georgia; some on horse-back, their effects on pack-saddles, and others used the rolling hogshead.⁴¹

An idea of the difficulties under which immigrants labored along these pioneer roads may be gathered from descriptions in books of early travel. In 1810 Peggy Dow gives us a description of her trip from the Natchez Country⁴² into Georgia. As she passed the last house of Natchez and entered the "vast wilderness" she tells us "my heart trembled at the thought of sleeping out in this place with no companion but my husband." Coming to a place

³⁸ Pickett, vol. xi, p. 234.

³⁹ By Act of the Legislature of the Mississippi Territory. Hamilton: Colonial Mobile. 348.

⁴⁰ Treaty with Cherokees, October 27, 1805.

⁴¹ Goods were packed in a hogshead, trunnions, or the equivalent, put in the ends, and to them were attached shafts by which an ox or horse would draw it along. P. J. Hamilton: Publication of the Alabama Historical Society, vol. xi, p. 50.

⁴² Dow's Life and Works, pp. 221-223.

where were found water and plenty of cane for the horses they struck camp for the night, built a fire, ate a supper of coffee and hard biscuit, then rested for the night on their blankets, "the wide extended concave of Heaven bespangled with stars" affording a majestic scene; while the "lonely desert uninhabited by any creature but wild beasts and savages" made her feel very much alarmed. Proceeding the next day forty miles they crossed the Pearl in a ferry-boat and slept "in a house, such as it was, that belonged to a half-breed." Passing by "Hell Hole, a dreadful slough," they crossed a creek (probably Leaf River) and becoming involved by the many little divisions of the road secured the services of an Indian guide and late at night reached the home of one Noles on the Chickasowha River about "thirty miles from the settlement on the Tombigbee." The next day, proceeding "through some delightful country" they reached "the first house that was inhabited by white people." The Tombigbee was crossed by ferry-boat at St. Stephens, the Alabama was crossed at a "ferry⁴⁸ kept by a man who was a mixture," where they stayed that night, and the next day they "struck the road that had been cut out by the order of the President."

"This made it more pleasant for traveling" the author continues, "and then we frequently met people removing from the states to the Tombigbee and other parts of the Mississippi Territory." Following as guide the "fresh marked trees" they crossed Murder Creek, the Chattahoochee "and reached Colonel Hawkins'" where the writer "felt grateful to the God of all grace for his tender care over us while in this dreary part of the land where our ears had been saluted by the hideous yells of the wolf, and had been surrounded by the savages more wild and fierce than they."

In 1818 Rev. John Owen moved with his family and effects, by wagon, from near Norfolk in Virginia to Tus-

⁴⁸ At Fort Claiborne.

caloosa, Alabama. Passing through Beauford's Gap of the Alleghanies, down the Holston Valley, by Knoxville, thence to the Tennessee River, crossing possibly at Nickajack, by Jones' Valley (near Birmingham of our day) he reached his destination after "nine weeks traveling, over broken roads, and exposed to every danger." He thought the roads in old Virginia were bad, but even his experience there had not prepared him for the shocks and jostles to be endured along the "infernal roads" of this new territory.⁴⁴

The Federal Road from Georgia to Alabama soon became the continuation of the stage line which connected Washington with the Southern States. In 1820 Adam Hodgson, an Englishman, traveled along this line from Washington to Mobile and in his "Letters from North America" (London, 1824) gives us a good idea of those days of westward movement. He left Washington on January 20th, 1820, in the "Mail stage, a mere covered wagon, open at the front" to which were attached four horses. Passing through Richmond and Petersburg (Virginia), Raleigh, Fayetteville and Lumberton (North Carolina), Georgetown and Charleston (South Carolina), he reached Savannah, Georgia, the stage having made an average on the trip of three and three quarter miles per hour.

"This," he complains, "is wretchedly poor traveling in the only public conveyance between Washington and the Southern States, yet this vehicle is dignified by the title of the 'United States Mail,' although it is only an open wagon and four, with curtains which unfurl; and the mail bags lie lumbering about your feet, among the trunks and packages which the passengers smuggle into the carriage" to obviate the danger of their falling off or being stolen, all baggage usually being merely "thrown on be-

⁴⁴ The *Journal of Rev. John Owen*, published by Thos. M. Owen in the "Publications of the Southern History Association," April, 1897, vol. i, p. 89. Quoted in "Publications of the Alabama Historical Society," vol. xi, p. 53.

hind." From Savannah Hodgson passed up the river by boat to Augusta and from here proceeded to Mobile on horseback. Milledgeville, then the Capital of Georgia, Fort Hawkins on the Ocmulgee, the Indian Agency on the Flint, Coseta on the Chattahoochee (modern Columbus), Fort Bainbridge, Caleebe and Cubahatchee swamps, Line Creek, Point Comfort, Pine Barren Springs, Fort Dale, Murder Creek, Burnt Corn, and Blakely are all successively mentioned, some of which may be seen on the map of Alabama to-day, and enable us to trace the route of the old Federal road along which the early settlers moved from Virginia, Georgia and the Carolinas into the Gulf States.

"The road, though tolerable for horses," he thought would be regarded in England as utterly impassable for wheels. Lonely stretches undotted for forty or fifty miles by a single house, often came into the experience of our traveler, the occasional inns were rude in structure, furnished in no very pretentious manner. As an example of the hotel facilities to be enjoyed, Hodgson describes the inn at Coweta as having only one bed room "with three beds such as they were," a log building, with clay floor and no windows. The proprietor of the inn, an adventurer from Philadelphia, arranged his prices so as to carry the conviction that he was not in the business merely for amusement but had come to exploit the necessities of the traveler.

To avoid wounding the feelings of the kind hearted hosts and hostesses he would sleep in these rather crowded and camp-like apartments when often he really envied his servant who had been compelled to seek his night's repose in the hay loft.⁴⁵

In January, 1835, Featherstonhaugh, another English tourist, passed along the same route from Montgomery, Alabama, to Richmond, Virginia. At Montgomery he learned that the mail stages, owing to bad roads, were

⁴⁵ A. Hodgson: *Letters from North America.* London (1824).

unable to run and mails were, therefore, sent on horseback. Unwilling to wait until late in the spring to secure passage, "after a good deal of chaffering" he finally agreed to give sixty-five dollars, as hire, for a "miserable vehicle and a pair of wretched horses" to conduct him to Columbus, Georgia, a distance of ninety miles. The road was found "quite answering to the description" which had been given, "being so frightfully cut up as to render it much more preferable to walk wherever the road was sufficiently dry. The black fellow who drove seemed to take it quite philosophically, observing nothing unusual in the kind of rocking and bouncing motion" and seemed to think the traveler not quite in his senses for preferring to walk when he had paid so much for riding.

By the close of the first day's travel he was reconciled to the liveryman's high charge of four shillings per mile, for they were only able to make fourteen miles during the day and he was persuaded that "such a performance could not be gotten up for less money in any part of the world." Almost unbroken lines of immigrants were daily passed, bringing with them their negro slaves. The women and children were drawn slowly along in heavy wagons while the hardy and dusky men, on foot, trudged wearily over the heavy road to their new and more southern homes. A thousand slaves moving thus, on foot, would be passed in a single day.⁴⁶ The distance to Columbus, ninety miles, was made only after four days of tedious travel. The greater portion of the road thus traversed lay within the lands yet occupied by the Creek Indians and over which the state of Alabama, therefore, had no jurisdiction; from the description given of this road we see that the appropriations from the Federal Government in 1833 and 1838 were made none too soon.

⁴⁶ Featherstonhaugh: *The Slave States.*

STAGE AND EXPRESS LINES.

From 1832 to 1838 the Indian tribes of Alabama were being pushed to their more western homes and by 1839 the last of these aboriginal tribes had passed beyond the Mississippi.⁴⁷ We have already seen the tides of immigration flowing in, anticipating the throwing open of these vacated lands. The population had now become sufficiently dense, and the travel and traffic sufficiently great, to justify the conduct of three separate lines of stages along the old Federal road from Columbus to Montgomery, the "Mail Line," the "Telegraph Line" and the "People's Line."⁴⁸

The coaches, usually built open for summer use, were, during the winter, closed in with painted canvas, or oil cloth, "but so loosely as to let in the cold air in every part," and were made as heavy and strong as the union of wood and iron could make them. These coaches usually contained three seats, the middle often provided with a broad leather strap to lean back upon and which was generally reserved for the ladies. To this vehicle two, four, or on the worst roads six horses would be attached. The driver and team were changed at the successive stages recurring at distances of from twelve to fifteen miles. The passengers, at the call of the driver, would sway their bodies to right or left, and even lean far out of the windows as the necessity arose, to keep in balance the coach as it was about to be upset. Delays at the small post offices and occasional "break-downs" kept the speed down to about four or five miles an hour. To the complaints of the passengers the patient driver would often reply that even the locomotive (which was already beginning to threaten his future) could do no better if put on these swamps and that the most that can be said is "that each kind of vehicle runs fastest on its own line of road." For these comforts and conveniences the

⁴⁷ Brewer: *Alabama*, pp. 50-54.

⁴⁸ Buckingham: *Slave States*.

passengers usually paid a dollar for eight or ten miles with no extra charge for delays, bumps, and occasional injuries. The fare often varied, however, according to the sharpness of rivalry between competing lines. For example, while the "Mail Line" was the only one in operation the charge from Macon to Columbus, Georgia, a distance of ninety miles, was twenty dollars. A second line reduced it to ten dollars. A third line followed and reduced it to five dollars. The two former lines then reduced their rates to one dollar. The latest company then carried their passengers for nothing, while the hotels furnished them with dinner and champagne at the expense of the coach proprietors. The three lines soon tired of this "cut throat" rate, and forming a "combine" adopted a uniform schedule of ten dollars per ninety miles.⁴⁹

Along this old Federal Road was established the "Express Mail," a device for rapid transmission of news and of market reports of sufficient importance to warrant the extra expense in their conveyance between the different towns and cities. The terminal points of this line were New York and New Orleans. Between these two points five hundred horses and two hundred boys, as riders, were employed. Each boy rode a distance of twelve miles out and twelve miles back. By thus placing a relay of horses at each of these successive intervals an average speed was maintained of about fourteen miles per hour.⁵⁰

Both the expensive "Express Mail" and the stage-coach system which had spread its network of lines throughout the state were soon destined to succumb to the railroad, which had already made its appearance in Alabama.⁵¹

⁴⁹ Buckingham: *Slave States*, 1839.

⁵⁰ Buckingham: *Slave States*.

⁵¹ The first railway laid in Alabama was completed in 1833. Brewer's *Alabama*, p. 98.

ROAD SYSTEM OF ALABAMA.

By act of Congress approved May 10, 1798, the land between the Chattahoochee and the Mississippi rivers and lying between 31° and $32^{\circ} 28'$ north latitude was created into the Mississippi Territory. At an early date⁵² the territorial legislature enacted a road law. This system was inherited by the territory, and later by the state, of Alabama, and remains in vogue to-day, practically without change.⁵³

The Courts of County Commissioners have original jurisdiction over the establishment, discontinuance, change, and repair of roads, bridges, causeways and ferries within the county. Four Commissioners, elected by the qualified voters of the county every four years, with the Probate Judge constitute the court. This court selects apportioners for each election precinct and these apportioners divide the roads within their precincts into sections designating a certain number of hands and appointing an overseer for each section. Not more than ten days labor may be required annually of every able-bodied man between the ages of eighteen and forty-five, for keeping roads in repair, and in some counties special acts allow this service to be commuted in money. It is hardly necessary to state that this system has not produced any earnestness of purpose for the improvement of highways, and the economy of good roads has been unappreciated and certainly has never been realized in Alabama.

During the early years of the state many companies were incorporated for the purpose of constructing turnpike roads. They were chartered for a limited number of years (often twenty), toll-gates were authorized at intervals of five miles, and the charges were fixed by the act of incorporation. An estimate of tolls charged may be

⁵² Act of March 1, 1805. Turner's Digest of the laws of the Mississippi Territory.

⁵³ Acts of Alabama Territory, 1818. Code Alabama, 1896.

gathered from an act of January 13, 1826, authorizing W. H. Ragsdale and his associates to build a turnpike road in Franklin County.

Rates were stipulated as follows:⁵⁵

Each loaded wagon and team.....	\$1.00
Each empty wagon and team.....	.75
Each cart, wagon and team.....	.50
Each pleasure four-wheel carriage.....	1.00
Each pleasure two-wheel carriage.....	.50
Man and horse .....	.12½
For each led horse.....	.06¼
Cattle per head .....	.04
Goats, sheep and hogs per head.....	.01

"The Blakely and Greenville Turnpike Company" incorporated in 1824, was authorized to charge for every five miles.⁵⁶

For each pleasure four-wheel carriage.....	\$.50
Each horse or ox wagon.....	.25
Man and horse .....	.12½
Loose horses, cattle, hogs and sheep per head.....	.02

By terms of this charter the Legislature was empowered at any time it might see fit, to examine the books of the company; the tolls received were never to exceed twenty-five per cent (annually) on the capital actually invested, nor should they fall below twelve and a half per cent of the same. The County Courts were to supervise the repairs of the roads, no tolls were to be allowed when the roads were out of repair, and the tolls should be raised or lowered as found necessary to keep the profits within the stated limits. The mails, express messengers, troops of State and Federal governments, all footmen, persons going to and from public worship, laborers going to and from their fields were usually exempted by the charters from all tolls.

From 1847 to 1853 may be called the era of plank-road

⁵⁵ Acts of Legislature, 1825-26.

⁵⁶ Acts of Legislature, 1824.

building in Alabama. Twenty-four companies, for example, were incorporated by the Legislature during the session 1849-50 for the purpose of constructing plank-roads.⁵⁷ Some of these projected plans were put into execution,⁵⁸ but the same session of the Legislature incorporated several new railroad companies thus indicating that the active railroad spirit was already present before which the impulse to plank-road building was soon to decline, in fact to disappear.

The people of Alabama during the thirties and forties, manifested a spirit of nervousness, feeling that they were being outstripped by the sister states, many of whom were lending substantial aid to works of internal improvement. Pressure was, therefore, repeatedly brought to bear upon Legislature and Governors to induce them to embark in a policy of state aid to river and canal improvements, turnpike and plank-road building.

That this enthusiastic spirit was held in check is due largely to the fact that the state was in great financial straits, resulting from the failure of the Bank of Alabama. An approximate loss of seven million dollars was entailed upon the state by the collapse of this institution, all of the debts of the Bank having been assumed by the state.⁵⁹ In Alabama during the decade 1845-55 a high rate of taxation was necessary to meet the interest on the public debt. A depleted State Treasury, a high tax rate and the permanent impression that the state, judged either as to efficiency or integrity, was not the best manager and promoter of financial enterprises,—all served as influences

⁵⁷ Acts of the Legislature, 1849-50.

⁵⁸ Governor Collier's Message, November, 1851.

⁵⁹ Alabama's State Bank: Article by J. H. Fitts in Bankers' Law Journal for June, 1895. Brewer: Alabama, p. 53. Messages of Governors, December 3, 1838, and December 16, 1845. J. L. M. Curry: Tract on "Hon. Francis M. Lyon as Commissioner and Trustee of Alabama." Garrett's Reminiscences, pp. 43, 63, 212, 217, 255, 258, 267, 275, 278, 670.

to discourage the policy of public aid throughout the entire period ending with the Civil War.

State aid to internal improvements was thus regarded as infeasible in Alabama during the very period when other states were most active in such work. Only small appropriations and loans were made to plank-road companies from the "two and three per cent funds" and these will be discussed at a later point.

In recent years several counties of Alabama have been empowered by the Legislature to issue bonds for the improvement of roads, and powers of taxation granted by which these bonds are to be retired. In other counties power has been granted of assessing a road-tax, which must be paid out of the general levy. The counties of Montgomery, Jefferson, Madison, Colbert, and Lauderdale many miles of macadam road have thus been built and the manifest advantages bid fair to increase the spirit and further the work of improvement.

CHAPTER II

RIVER AND HARBOR IMPROVEMENT

STATE AID

Alabama ranks among the first states of the Union in the number, extent, and value of her magnificent water lines. Every section, and nearly every county, of the state is watered, and afforded commercial facilities by some one or more of its navigable rivers. Professor Tuomey, the first State Geologist of Alabama, said in one of his reports: "There is scarcely an extensive and really valuable agricultural tract in the State that has not its navigable stream." This region is traversed by two great systems of waterways, (1) the Tennessee with its tributaries, connecting North Alabama with the Mississippi; and (2) that group of rivers which drain much the largest part of Alabama together with considerable portions of Georgia and Mississippi also, and find a common outlet into the Gulf of Mexico through the waters of the Mobile Bay.

This latter system, converging at Mobile, spreading out, fan-shaped over magnificent timber regions, over fertile agricultural districts, and reaching into the center of the inexhaustible coal and iron deposits of North Alabama, affords a field for improvement the merits of which are probably unsurpassed by any water system within the United States. The improvements which have been made upon these waters have been due almost exclusively to the Federal Government, the state of Alabama having done practically nothing along this line. Rivalries between the different sections of the state caused hitches in legislation which for a long time prevented application even of the three and two per cent funds to the purpose

for which they were set apart by Congress. In the early days of settlement no adequate system of revenue existed, the citizens were heavily burdened to meet the maturing payments for public lands which they had purchased. The population, too, was more or less shifting, and the spirit of internal improvements, so prominent in other states, was not so enthusiastically felt in Alabama. The importance of improving the rivers was realized, no doubt, but the movement was held in check by the drain on the currency for public lands and later by the financial convulsions and heavy taxation resulting from the disastrous banking scheme in which the state so early embarked. The Constitution under which the state was admitted to the Union provided for obtaining "accurate knowledge of such objects as may be proper for improvement and for making a systematic and economical application of means appropriated to them."¹ Governor Bibb, in his message of October 26, 1819,² recommended "the appointment of a skilled engineer, whose duties it shall be to examine the rivers within our limits with reference to the expediency and expense of improving navigation of each, and also the nearest and most eligible approach which can be made between the waters of the Tennessee and Mobile rivers."

The Legislature, accordingly authorized the examination, under the supervision of the executive, of some of the most conspicuous points of improvement. A competent engineer was employed and some examinations were made but no improvements materialized. In 1821, Governor Pickens recommended the establishment of a permanent board of internal improvements, and suggested that such a board could act without friction from sectional rivalry and would be free from "hauling" influences. He again emphasized the necessity of a canal by which the Tennessee and the Alabama rivers were to be connected.³ This canal

¹ Constitution of 1819, Article vi, Section 21.

² House Journal, 1819-20.

³ Message of Governor Pickens: House Journal, Nov. 9, 1821.

project was a plan long cherished by the people of Alabama as a means of more closely uniting the northern and southern sections of the state. The mountain barriers which separated the Tennessee Valley region from the more southern portions of the state prevented that full unity of interest and harmony in feeling which are so essential to the life of a government, and in the formation of which close commercial relations are so potent. Commercially, North Alabama was more closely connected with Louisiana than with South Alabama. Their products were shipped down the Tennessee, Ohio and Mississippi rivers to New Orleans a distance of 1500 miles, and from the latter point the greater portion of their supplies was purchased. On account of the shoals in the Tennessee River even this means of transportation was blocked for a great part of the year, and markets had to be sought at Savannah, Augusta or Charleston. The approximate distance from the Tennessee Valley section to these three points was six hundred miles. From fifty to one hundred and fifty miles of this route had to be covered by wagons for at least one-half of the year.⁴ This inconvenient and expensive method of transportation for many years proved a heavy incubus to the industrial development of the North-Alabama section. Emphasizing the importance of this canal scheme, Governor Gayle, in his message of 1834, stated that such a canal, uniting the Tennessee and the Alabama systems would carry to Mobile annually 150,000 bales of cotton "which go now to other states by dangerous and expensive routes." Not only was Mobile, the emporium of the state, being deprived of that share of the state's traffic to which she was actually entitled, but heavy losses were being sustained also by the citizens of North Alabama on account of the lack of transportation facilities. For example in 1833 cotton was worth

⁴ Speech of Hon. R. W. Cobb in House of Representatives, Cong. Globe, vol. xxiii, Appendix, p. 157.

in New Orleans and Mobile fifteen cents per pound, but before the high water season had come, thus admitting of the navigation of the Tennessee River through the shoal portions, cotton had fallen to ten cents per pound. Before the farmers of this region could get an outlet their cotton had seen a decline of five cents per pound. During this year alone it is estimated that the loss thus entailed upon the Tennessee Valley counties was not less than \$2,265,000.⁵ Not only was it difficult to find an outlet for cotton, but markets for provisions and general supplies were often inaccessible. These facts created the necessity for self sustaining farms, tended to prevent exclusive cotton culture in North Alabama, resulted in a more diversified system of crops demanding smaller holdings of land and a smaller number of slaves than were found in the more southern portions of the state. As the result of these conditions the two sections were somewhat divided in sentiments respecting slavery. This lack of harmony of interest and feeling continued till the beginning of the Civil War, and came near rending the state asunder on the question of secession. For quite awhile the Tennessee Valley counties were projecting the formation of another state, "Nickajack," which should remain with the Union. The fate of Virginia, however, was averted by the rapidity of invasion which caused the two sections to present a united front.

That "geographical and sectional names might be annihilated" that the state might become really "one people," "identified in interests, assimilated in character and harmonized in feelings"⁶ was then, one of the strong reasons which prompted the efforts to connect North and South Alabama by some line of transportation. There were projected two plans by which this might be accomplished. Both involved the cutting of a canal between the two rivers.

⁵ Message of Governor Gayle, November 18, 1834.

⁶ Message of Governor Clay, 1835.

One of these, known as the "Tennessee and Tombigbee Canal," was to run from Fort Deposit on the Tennessee River to Tuscaloosa on the Black Warrior River.⁷ Owing to the length of this proposed route and the expense which would be involved the feasibility of this plan was more visionary than real. Another and doubtless more feasible route for a canal to unite the two river systems was the "Hiwassee and Coosa Canal," and was to extend from a point on the Okou, a navigable branch of the Hiwassee, to a point on the Conesaugo, a navigable branch of the Coosa, near the Georgia and Tennessee line, where these waters approach each other to within about twelve miles.⁸ At a meeting held in Cahaba, Alabama, on May 20, 1823, this project was recommended as a means of laying open a passage for boats from the headwaters of the Tennessee River, in Virginia, through the Coosa and Alabama Rivers, to Mobile and the Gulf of Mexico. It was thought that by such a canal the trade from the eastern part of Tennessee, the western portions of Virginia and North Carolina and from the northwestern sections of Georgia that enormous district drained by the tributaries of the Tennessee and the Coosa rivers would all be drawn to Mobile.⁹ The Governor of Alabama in the following November recommended to the Legislature that a corporation be encouraged to carry out the proposed plan, showing that financial conditions would not authorize the state to embark in any pronounced work of improvement at that time. The Legislature passed an act¹⁰ incorporating the "Coosa Navigation Company," naming nine towns particularly, and appointing for each town three superintendents who should open books for subscription on the first Monday in June, 1824. The plan met the approval of the Federal

⁷ A connected view of the whole Internal Navigation of the United States (1830), p. 377.

⁸ Internal Navigation of the United States (1830), p. 389.

⁹ Message of Governor S. B. Moore, November, 1831.

¹⁰ Approved December 30, 1823.

Government, but it seems that the people were not so enthusiastic over the plan as were the authorities; at any rate the capital was not raised and no canal resulted.

A later act incorporating the "Alabama and Tennessee Canal Company"¹¹ met with the same fate. Both companies were still-born. In 1828 this project was examined under the auspices of the United States Government, a route was levelled and surveyed for the proposed communication which should pass through the most favorable depression of the ridge which divided the two tributary valleys, and which should have as terminal points Hiltebrand's boat-yard on the Okou and McNair's boat-yard on the Conesaugo, a length of twelve miles. The plan was pronounced feasible, but promised to be very expensive on account of the requisite deep cutting at the summit level, together with other local difficulties which would have to be overcome.¹² This plan, when completed, was to form but a part of that greater system known as the "Southern Route" which was to connect the whole of the Tennessee Valley with the Atlantic seaboard. This canal, connecting the Tennessee and the Coosa, together with another canal joining the Etowah with the Ocmulgee would complete the line by which, after improvements of various river channels, it was hoped to obtain continuous navigation during at least eight months of the year from the Mississippi River to the Atlantic Ocean. The Ohio, Tennessee, the Etowah, the Ocmulgee and Altamaha, together with the canals which supplied the missing links were to constitute this Southern system of navigation, a plan more beautiful in theory than easy in practice, and destined to pass into oblivion as a dead scheme before the absorbing interest which was soon to be awakened in railroad building.¹³

¹¹ Approved January 11, 1827.

¹² Internal Navigation of the United States, p. 391.

¹³ Internal Navigation of the United States (Edition 1830), pp. 390-92; Report of Major Mahan, Corps of Engineers, 1894.

The Tennessee-Coosa Canal, however, is still periodically mentioned and discussed as a future possibility. Major McFarland, reporting to the chief of engineers in 1872, asserted the feasibility of a canal from Gadsden, on the Coosa, to Guntersville, on the Tennessee, a distance of thirty-five miles. He estimated that it would require \$11,570,607 to execute the project. This plan, together with the improvement of the Coosa, would empty into the Bay of Mobile by an easy and cheap water route, the agricultural and mineral wealth of immense stretches of country now shut out from the sea except by costly railroad transit or by the three thousand miles of water route through the Tennessee and Mississippi. It would open to its natural and nearest seaport one-fifth of the state of Alabama, a large section of North Georgia and the whole sweep of the Upper Tennessee with its score of important tributaries.¹⁴ Toward this important object the state of Alabama has contributed nothing and the Federal Government has never been induced to make appropriations for its execution. The Legislature, by Act of January 15, 1830, organized a body known as the "President and Directors of the Board of Internal Improvements."¹⁵ This Board was to consist of six commissioners, to be elected biennially by a joint vote of the two houses of the Legislature. To avoid discriminations as to sections the act stipulated that these commissioners should be chosen one from the section below the junction of the Tombigbee and Alabama rivers; one from section below junction of Coosa and Tallapoosa rivers; one from the section below junction of Tombigbee and Black Warrior rivers; one from the section above the junction of the two last named rivers; one from section between the Coosa and Cahaba rivers; one from the Tennessee Valley section.

The Governor was made ex-officio president of the

¹⁴ Report of Captain Price to Chief of Engineers July, 1890.

¹⁵ Acts of Alabama, 1829-30.

Board. The members of the Board were to receive the same per diem and mileage as were paid to members of the Legislature. In them was vested the contracting for, and superintendence over, such works of internal improvement as might be directed by the Legislature. A report of progress and expenditures, together with recommendations for further work, should be made annually to the same authority. It was declared by the act that all expenditures should be paid from the "three per cent fund," and that this fund should be held by the State Bank subject to the drafts of the "President and Directors" of the Board. This act, bearing upon its face the impression that it would result in some positive efforts toward improved navigation, accomplished no material results, the scheme passed off as vapor, and the act was repealed by the Legislature on January 21, 1832. In 1839 the Governor in his message to the Legislature said of the state's policy toward internal improvements: "If it should be said that we are behind other states in this respect, it may be replied that if we are destitute of those ready and agreeable means of communication which abound and greatly facilitate traveling and transportation in some of the states, we are at least free from the weight of those monumental debts that have been contracted to carry on their works of internal improvement." He expressed a strong "preference for the opening and improving the navigation of rivers over every other description of internal improvement," and still adhered to the old "determination of effecting some permanent connection between the waters of the Mobile Bay and the Tennessee River," adding, however, that "circumstances seem to forbid our engaging in it at present."¹⁶ At the beginning of the session of 1840-41 a committee was appointed on inland navigation, and a resolution was adopted instructing the committee to "inquire into the propriety and expediency

¹⁶ Message of Governor Bagby, December, 1839.

of appropriating the whole of the three per cent fund to the completion of the Selma and Tennessee Railroad; or of some other mode of appropriating said fund so as more closely to indentify the Northern and Southern parts of our state." After some deliberation the committee reported back that it was inexpedient to legislate on the subject. The House refused to concur and the resolution was recommitted. On January 5, 1841, the committee made their report in which were discussed, pro and con, the various suggested methods or projects by which North and South Alabama should be connected.¹⁷ For the accomplishment of this end the committee pronounced a macadamized road as infeasible. For such a road the proper rock is not obtainable, and, even if constructed, "would not divert the commerce of the North from its now accustomed channel." The most practicable method, the committee declare, would be to connect the Tennessee with the Coosa by a railroad, of not more than twelve miles in length, to extend from the Hiwassee to the Conesauga Creek. Owing to the embarrassed condition of the state's finance they "repeat the expression that it is now inexpedient to legislate on the subjects," and ask to be discharged. This report shows that from the three per cent fund had been expended the following amounts:

December 19, 1837, for improving the Coosa.....	\$30,000
December 19, 1837, for improving the Tombigbee.....	25,000
February 1, 1839, for improving the Coosa.....	30,000
February 1, 1839, for improving the Paint Rock.....	10,000
February 2, 1839, for improving the Choctawhatchee.....	10,000
February 2, 1839, for improving the Elk.....	10,000
February 7, 1839, for improving the Black Warrior.....	20,000
<hr/>	
Total	\$135,000

These amounts were, by far, too small for the accomplishment of the purposes to which they were appropriated, and no permanent improvements resulted. The "three per cent fund," including interest which has ac-

¹⁷ House Journal, 1840-41.

crued while invested in the State Bank, then amounted to \$545,737.53. Deducting from this the above \$135,000 leaves an unexpended balance of \$410,737.53. The state being involved, no further appropriations were made for improving navigation facilities, and at a later date the fund was expended as subsidies to railroad companies.

IMPROVEMENTS BY THE FEDERAL GOVERNMENT.

For the purposes of improvement by the Federal Government the rivers of Alabama fall into three divisions: (1) the Northern system (consisting of the Tennessee and its tributaries), which is now in charge of Captain Kingman, Corps of Engineers, with headquarters at Chattanooga; (2) the rivers which drain the more eastern portion of the state, now in charge of Captain Flagler, Corps of Engineers, with headquarters at Montgomery: in this system are comprised the Alabama (with its tributaries, the Cahaba, the Coosa and the Tallapoosa), the Chattahoochee, the Choctawhatchee and the Conecuh; (3) the Mobile Bay, Harbor and River with the Tombigbee and Warrior: this system drains the western and north-central portions of the state and is now in charge of Major Rossell, Corps of Engineers, with headquarters at Mobile.

In discussing the efforts which have been made to improve the navigation on these streams we will treat each separately, beginning with

(1) THE TENNESSEE.—This stream receives its water from Virginia, North Carolina, Georgia, Tennessee, Alabama, Mississippi and Kentucky, seven different states. The total area drained by it is forty-four thousand square miles, an area almost equal to that of England. This river, with the navigable portion of its tributaries, gives a system of water transportation of thirteen hundred and eighty-two miles navigable by steamboats plus ten hundred and fifty-three miles navigable by rafts and flat-

boats, making, in all, a system of internal water ways of twenty-four hundred and thirty-five miles.¹⁸

Less than five hundred and fifty miles of this extent have ever been surveyed and no project has been formed for the system as a whole, but the improvements have been limited to the main trunk with three or four of its tributaries. This river enters the state of Alabama in the extreme northeast corner, flows southwestwardly to Guntersville, a distance of seventy-four miles; thence northwestwardly to Waterloo, in the extreme northwest corner of the state, a distance of one hundred and thirty-three miles, from which point it forms a part of the boundary between Alabama and Mississippi before re-entering the state of Tennessee. The chief obstruction to the navigation of this river is the barrier between Brown's Ferry and Florence and known as the Muscle Shoals. Here Elk River Shoals, Big Muscle Shoals, and Little Muscle Shoals present a series of obstructions extending, with intervening pools of deep water, a distance of thirty-eight and a half miles, and until recently prevented navigation during a great part of the year between hundreds of miles of navigable waters above and over two hundred and fifty miles of open river below. We have already noted¹⁹ the inconvenience and losses which were entailed upon the North Alabama people by these obstructions. In the counties of Madison, Morgan, Limestone, Lawrence, Franklin, and Lauderdale thousands of acres of land had been relinquished by purchasers of public lands who were unable to meet the maturing payments. By law approved May 23, 1828, Congress granted²⁰ to the state four hundred thousand acres of these "relinquished lands," the proceeds to "be applied to the improvement of navigation of the Muscle Shoals and Colbert's Shoals in the Tennessee

¹⁸ Report of Captain Kingman, 1896.

¹⁹ Page 63.

²⁰ In accord with a Memorial from the Legislature of Alabama (January 15, 1828) asking such a donation.

River and such other parts of said river within said state as the Legislature thereof may direct."²¹ If there were not found four hundred thousand acres of relinquished land in the counties named above the deficiency was to be supplied from any unappropriated lands in Jackson County. Thus these lands lay in seven counties of the state. The act provided also that the improvements should be made according to the plan recommended by the United States engineers who should be appointed to survey and report a plan. The Legislature of the state created²² "the Board of Tennessee Canal Commissioners," consisting of five men, in whom was vested the power to make contracts for the execution of plans recommended by the engineers. The proceeds from the lands aggregated \$1,400,000.²³ In 1831 work was begun under the auspices of this board, and a canal was cut around Big Muscle Shoals fourteen and a quarter miles long, sixty feet wide and six feet deep. By 1836 the canal had been completed, and was thrown open for navigation, but continued in use for about one year only. Too little attention had been given to its terminal approaches and boats could enter the canal only at certain stages of the water. The following year the canal was closed for want of funds. Being thus abandoned the canal fell gradually into ruin till work was resumed by the Federal Government about forty years later.

Since 1868 appropriations have been regularly made for the improvement of the Tennessee in each river and harbor act. The appropriations divide the river into two sections, Chattanooga being the dividing point.

(1) That portion of the river above Chattanooga is used principally for rafting lumber and logs, though it is also plied by flat-boats and steamboats of light draft. In 1832 the state of Tennessee undertook the improvement of certain points above Chattanooga; the work, however,

²¹ United States Statutes at Large, vol. iv, p. 290.

²² By Act approved January 15, 1830.

²³ Memorial from Legislature to Congress, December 23, 1868.

did not prove of any lasting value. The plan adopted by the Federal Government has been to obtain a three-foot low water navigable channel between Chattanooga and the French Broad by excavating rock and gravel, by removing boulders, and by the construction of wing dams. For this purpose appropriations have been made between April 10, 1869, and March 3, 1899, aggregating \$391,000.²⁴ The expenditures have resulted in giving a lengthened season of navigation and improving the channel at many of the places of obstruction.²⁵

(2) For the improvement of the Tennessee below Chattanooga the following appropriations have been made:

March 2, 1827.....	\$ 200.00	(survey)
May 23, 1828	1,400,000.00	(400,000 acres land)
August 30, 1852.....	50,000.00	
June 9, 1860.....	1,350.00	
June 12, 1860.....	1,406.94	
July 25, 1868.....	85,000.00	
April 10, 1869.....	5,095.00	
July 11, 1870.....	80,000.00	
June 10, 1872.....	50,000.00	
March 3, 1873.....	100,000.00	
June 23, 1874.....	100,000.00	
March 3, 1875.....	360,000.00	
August 14, 1876.....	255,000.00	
June 18, 1878.....	300,000.00	
March 3, 1879.....	210,000.00	
June 14, 1880.....	300,000.00	
March 3, 1881.....	250,000.00	
August 2, 1882.....	250,000.00	
August 7, 1882.....	3,970.18	
July 5, 1884.....	350,000.00	
August 5, 1886.....	262,500.00	
August 11, 1888.....	250,000.00	
Sept. 19, 1890.....	475,000.00	
March 17, 1891.....	3.91	(transfer settlement)
July 13, 1892.....	500,000.00	
August 17, 1894.....	400,000.00	
June 3, 1896.....	50,000.00	
March 3, 1899.....	235,000.00	
 Total.....	\$6,324,526.03	

²⁴ Reports of Engineers; and United States Statutes at Large.

²⁵ Report of Captain Kingman, July 18, 1896, and Statutes at Large.

In 1867 an examination was made of this part of the river (from Chattanooga, Tennessee, to Paducah, Kentucky). Upon this survey the present project was decided upon, though subject to subsequent modifications. It was determined that attention should first be directed to Muscle Shoals, as navigation here was effectually closed, and the river would be practically useless unless this barrier be overcome. Consequently the greater part of the above appropriations has been expended on this section of the river.

From Chattanooga to Decatur, a distance of one hundred and forty-five miles, occur a number of reefs and bars which tend to obstruct navigation. The approved project for this section "is to remove obstructions so as to obtain a depth of at least three feet at low water" by blasting, dredging, and by removing boulders, snags and gravel. The work done in pursuance of this plan has rendered up-stream navigation easier, and the dangers of down-stream navigation have been materially remedied, though the difficulties are not yet entirely overcome.

From Decatur to Florence.—The object of the improvement on this section of the river is to obtain continuous navigation around the three sets of shoals which obstruct the greater part of the distance of forty-eight miles between these two points. The approved project, based on the survey made in 1872 and modified in 1877, is : (1) to enlarge, rebuild and straighten the old canal around Big Muscle Shoals (built in 1831-36, and which had been abandoned in 1837) so as to give a canal fourteen and a half miles long, with nine locks having a total lift of eighty-five feet, the canal to be six feet deep and seventy to one hundred and twenty feet wide at the water surface. (2) To construct at Elk River Shoals a canal one and a half miles long, with two locks with a total lift of about twenty feet. (3) To blast at Little Muscle Shoals a channel through the bed-rock of the river and to construct stone wing dams and retaining walls to contract the waterway; to

construct a lateral canal fifteen thousand feet long with a guard lock at the head and a lock at the foot having a lift of twelve feet. Up to June 30, 1895, there had been expended on these works \$3,191,726.50 in addition to the original land donation of 1828. Owing to the fact that appropriations have not been adequate for rapid and continuous work, progress has been somewhat slow. However, Big Muscle and Elk River Shoals have been rendered navigable at all seasons of the year, the channel at Little Muscle Shoals has been much improved and work is still in progress.

From Florence to the foot of Bee Tree Shoals (30 miles).—The obstructions here found are the Bee Tree and Colbert Shoals which begin about twenty-two miles below Florence and extend a distance of eight miles with a total fall of twenty-five feet at low water, at which stage the available depth is about one and a half feet. To June 30, 1890, for surveys, excavations, removal of rock from the channel and construction of dams only \$62,243.41 had been spent on this section of the river. In this year a new project was adopted which, as modified in 1891 and 1892, contemplates the construction of a canal 7.8 miles long, one hundred and fifty feet wide with a depth of seven feet. A guard lock is to protect the upper end of the canal and at the lower end a lock of twenty-five feet lift is to be constructed. Under this project, to June 30, 1895, had been expended \$149,735.42 and work is still in progress under an appropriation (made by Act of Congress March 3, 1899) of \$100,000 toward this item.

From the foot of Bee Tree Shoals to Paducah, Kentucky.—Along this section of the river comparatively little has been expended owing to the attention attracted to the more serious obstructions above. To August 17, 1894, only \$62,043.32 had been allowed (from the general appropriation) for the improvement on this section. To this add \$200,000 appropriated by acts of August 17, 1894, and March 3, 1899, gives a total of \$262,043.32 expended below

the foot of Bee Tree Shoals. Snagging, making surveys, and improving Livingston Point (which with two small islands below it forms the harbor of Paducah) constitute the work done here. This portion of the river, being below most of the large tributaries, affords the best navigation of the whole stream, and three-fifths of the entire business of the river and its tributaries is done on this division.

The river is not yet navigable for the entire year, but the success of the improvements already made warrant the assertion that the main trunk of the river can be rendered so, and the navigable season can be greatly lengthened on all the tributaries.²⁶

(2) THE CHATTAHOOCHEE.—This river rises in the extreme northern part of Georgia, flows southwestwardly until at West Point it strikes the boundary line between Alabama and Georgia; thence it flows nearly due south, forming the boundary line between these two states, and further on in its course between Georgia and Florida until it joins the Flint, forming thus the Apalachicola. The Chattahoochee does not become navigable till it reaches Columbus, about two hundred and twenty-five miles above its junction with the Flint. Between these two points the plan of improvement (adopted in 1873 and still in force) is to get and maintain a channel four feet deep and one hundred feet wide. For this purpose \$377,000 have been appropriated and expended, beginning with the first appropriation of \$2000 (February 24, 1835) and including the last appropriation of \$50,000 (March 3, 1899).²⁷

(3) THE TALLAPOOSA.—Under an act of Congress approved June 14, 1880, an examination and partial survey of this river was made which resulted in a project for improvement designed to obtain a navigable channel from

²⁶ Reports of Major Kingman in Annual Reports of the Chief of Engineers, War Department.

²⁷ Reports of Major Mahan, July 13, 1896; and of Major Mahan and Captain Flagler, September 28, 1899.

its junction with Coosa River to the foot of Tallassee Reefs, a distance of forty-eight miles. The work done consisted in the removal of logs and snags, deepening shoals and cutting overhanging timbers. For this purpose appropriations have been made aggregating \$44,000 between August 2, 1882, and September 19, 1890.²⁸ The Tallapoosa flows through rich cotton lands, largely cultivated, with many thousands of acres of arable and well timbered uplands adjacent. The falls of Tallapoosa furnish magnificent water power which is partly utilized by cotton-mill industries. The river, however, is not susceptible of permanent improvement, and Captain Price in his report of July 10, 1893, states that no commercial use is made of the improved channel. Pursuant to his recommendations no further appropriations have been made for this river and work has been therefore suspended.²⁹

(4) THE CHOCTAWHATCHEE.—The commerce of this stream is mainly cotton, saw-logs, timber and lumber. That part of the river considered for improvement is that from its mouth to Newton, Alabama, a length of 162 miles. The most of the commerce of this stream is done between Geneva, Alabama, and Caryville, Florida. Below the latter place the Choctawhatchee runs through a sparsely settled country where the business is almost exclusively that of cutting and rafting timber.

The project for improvement as adopted in 1880, and amended in 1890, provides for the securing of a channel navigable in low water from the mouth of the river to Newton, Alabama. Appropriations for this river began as early as March 3, 1833. From that date other amounts have followed from time to time, making a total of \$162,000 up to, and including, the appropriation of March 3, 1899.³⁰

²⁸ Report of Captain Black for Fiscal Year, ending June 30, 1890.

²⁹ Report of Captain Price, July 10, 1893.

³⁰ By Act February 2, 1839.

To this amount must be added the \$10,000 appropriated by the State Legislature from the three per cent fund.³¹

(5) THE COOSA.—This river is formed by the junction of the Oostenaula and the Etowah. The Etowah is not navigable. The Oostenaula and its tributary, the Coosawattee, are navigable the year round for light draft boats from Rome, Georgia, at the junction of the Oostenaula and Etowah, to Carter's Landing, Georgia, on the Coosawattee, a distance of 105 miles. There would be a continuous water route of transportation from Carter's Landing, Georgia, to Mobile, Alabama, were it not for the shoals and rapids on the Coosa River distributed over a distance of 137 miles in Alabama between Greensport and Wetumpka. This reach, covering 776 miles, would thus include the Coosawattee, the Oostenaula, the Coosa, the Alabama and the Mobile rivers.³² Realizing the importance of this route to the commercial and industrial life of the state the Legislature of Alabama in 1823 passed an act looking forward to the improvement of Coosa River.³³ The plan was, however, to be executed by private capital. The project was approved by Congress in 1824 and four years later Congress enacted that any surplus from the grant (400,000 acres of land) for the improvement of the Tennessee River should be applied to the improvement of the Coosa, Cahaba and Black rivers. No private capital was subscribed to the Coosa Navigation Company, "nor was there any surplus from the Tennessee land grant," so the whole scheme was abortive. Other efforts were made by the state in 1837, and in 1839, when in each year \$30,000 were appropriated from the "three per cent fund" for improving the Coosa.³⁴ With these small amounts,

³¹ Reports of Major Mahan, 1897; and of Major Mahan and Captain Flagler, 1899; also Statutes at Large, vol. xxx.

³² Report of Major Mahan, 1894.

³³ Acts of Alabama: "Coosa Navigation Company," incorporated by Act, December 30, 1823.

³⁴ Acts of Alabama, 1837 and 1839.

however, no permanent work resulted. In 1876 the work of improvement began by the Federal Government. The river is divided into two sections: (1) that lying between Rome and the East Tennessee, Virginia and Georgia Railroad Bridge and (2) that lying between this bridge and Wetumpka. On the first of these divisions the plan provided for eight locks and dams at the points of greater obstruction and for works of contraction and channel excavation for points less troublesome. It is on the second of these sections that the most serious difficulties are encountered. Here a series of twenty-three locks and dams must be constructed, and the accomplishment of this end is the present plan. Appropriations from the Government have been as follows:³⁵

From Rome to E. T. V. & G. R. R. Bridge:

August 14, 1876	.....	\$ 30,000.00
June 18, 1878	.....	75,000.00
March 3, 1879	.....	45,000.00
June 14, 1880	.....	75,000.00
March 5, 1881	.....	60,000.00
August 2, 1882	.....	83,700.00
July 5, 1884	.....	50,000.00
August 5, 1886	.....	45,000.00
August 11, 1888	.....	60,000.00
September 19, 1890	150,000.00
July 13, 1892	130,000.00
August 18, 1894	110,000.00
June 3, 1899	20,000.00
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Total	\$983,700.00

From Bridge to Wetumpka:

September 19, 1890	\$150,000.00
July 13, 1892	100,000.00
August 18, 1894	110,000.00
June 3, 1896	50,000.00
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Total	\$410,000.00

Work was not begun on the lower of these two sections until after 1890, for in this year the first appropriation was

³⁵ Reports of Engineers and Statutes at Large.

made for the specific work. The Coosa River flows through the mineral regions of North Alabama, the agricultural belt of Middle Alabama and the timber districts of Southern Alabama, and its importance as a commercial route can hardly be overestimated. The appropriations for this river have been so small that very little of the work to be done has been yet effected, and it has been estimated that at the present rate "it will be 150 years before this section will have water transportation for its coal and iron to Mobile."⁸⁶

(6) THE CAHABA.—Above Centreville, Alabama, the Cahaba River, though flowing through the extensive Cahaba coal fields, cannot be utilized. The river in this section consists of a series of pools and rapids which can be overcome only by extensive use of locks and dams, a plan too expensive to be feasible. Surveys of this stream were made in 1875 and 1881, and under recommendations then made a plan was adopted which contemplated obtaining a navigable channel from its mouth to Centreville, a distance of 88 miles. This was to be accomplished by the removal of snags and logs, by excavating gravel bars and deepening sand bars by works of contraction and shore protection. For this purpose the Government appropriated \$45,000.00 between August 2, 1882, and July 13, 1892. Two railroad bridges without draws, one ten miles, the other twenty-two miles, above the mouth of the Cahaba, prevent any commercial use being made of the river, and as no efforts have ever been made to compel the placing of draws in the bridges, work has been suspended and no further allotments made to this river.⁸⁷

(7) CONECUH AND ESCAMBIA.—This river, north of Florida and Alabama line, is known as the Conecuh; south of that line as the Escambia. This stream is of more importance probably to Florida than to Alabama. It sup-

⁸⁶ Report of Major Mahan, 1894.

⁸⁷ Report of Major Mahan, 1894.

plies two-thirds of all the timber, which is the principal export product of Pensacola. The commerce of this stream in 1895 was estimated at \$2,000,000.00, consisting almost exclusively of timber products. The project of improvement provides for securing and maintaining a channel sufficient for the passage of timber rafts from the mouth of Indian Creek in Alabama to Pensacola, Florida. To this end \$102,500.00 have been appropriated between March 2, 1833, and March 3, 1899.

(8) THE ALABAMA.—For the improvement of this river the appropriations have been as follows:⁸⁸

June 18, 1878	\$ 25,000.00
March 3, 1879	30,000.00
June 14, 1880	25,000.00
March 3, 1881	20,000.00
August 2, 1882	20,000.00
July 5, 1884	10,000.00
August 5, 1886	15,000.00
August 11, 1888	20,000.00
September 19, 1890	20,000.00
July 13, 1892	70,000.00
August 18, 1894	50,000.00
June 3, 1896	40,000.00
March 3, 1899	50,000.00
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Total	\$395,000.00

The original project for improvement was to obtain a channel four feet deep at low water with a minimum width of two hundred feet from Wetumpka to the junction of the Alabama and Tombigbee rivers, a distance of three hundred and twenty-three miles. This plan, adopted in 1876, was amended in 1891 so as to provide for a depth of six feet. In its original condition, owing to logs, snags, fallen trees, bars and shoals, the navigation of this river was difficult and tardy. The work done has been to remove these obstructions, to blast and dredge rock and gravel bars and to deepen sand bars by works of contraction and shore protection. The channel has been much

⁸⁸ Report of Major Mahan July 10, 1897; and Statutes at Large.

improved and is now navigable from Montgomery to Mobile during the greater portion of the year. The commerce of the Alabama River is important, averaging annually from six to nine million dollars.³⁹

(9) MOBILE HARBOR.—The Mobile Bay from its mouth to the city wharves is thirty miles; its width at its entrance from the Gulf is three and a quarter miles, at its lower anchorage about twenty miles and at its northern extremity it again narrows down to a width of about eight and a half miles.⁴⁰ In the original condition of this bay the wharves of Mobile could not be reached by a vessel of any considerable size owing to obstructions in the channel, particularly at the points known as Choctaw Pass, where the channel was only five and a half feet deep, and Dog River Bar where the depth was only eight feet.⁴¹ All vessels except those of very light draft were forced to lie in the lower anchorage twenty-seven miles from the city. All cargoes had to be transported to and from there by lighters at an annual cost of not less than \$100,000.00. Cotton and other goods in passing up and down the bay were "liable to damage from exposure to weather and it is fair to suppose that it was a prominent reason for the Liverpool cotton merchants assuming, as they did, that cotton going by way of New Orleans arrived in better order, and so should bring a better price than when they went by way of Mobile."⁴² This was the status when work was begun by the Federal Government in 1827. Since that date there have been five different projects of improvement: (a) Under the original plan between 1827 and 1857 an unobstructed channel was obtained ten feet deep and about two hundred wide from Mobile to the Gulf of Mexico. (b) In 1870 the second

³⁹ Reports of Engineers, 1896, 1897 and 1899.

⁴⁰ Berney: Hand-Book of Alabama, p. 504.

⁴¹ Report of Major Rossell, 1896.

⁴² Memorial and Proceedings of the Rivers and Harbors Improvement Convention assembled at Tuscaloosa, Alabama, November 17, 1885. p. 38.

stage was entered upon when a channel was planned from the city to the gulf thirteen feet in depth and three hundred feet wide. (c) The plan was again amended in 1878 to provide for a channel of seventeen feet depth and two hundred feet width. This project was completed in 1889. (d) While the plan was nearing completion another was adopted. In 1888 work began under the fourth project which provided for a channel twenty-three feet deep at mean low water. The upper end of this proposed channel was moved from Mobile to the mouth of the Chickasabogue Creek, thus adding a little more than two miles to the length of the channel. (e) The River and Harbor Act of March 3, 1899, appropriated \$100,000 for continuing this improvement: "provided, that a contract or contracts may be entered into by the Secretary of War for such materials and work as may be necessary with the view of ultimately securing a channel twenty-three feet deep and one hundred feet wide at the bottom, with appropriate slope, to be paid for as appropriations may from time to time be made by law, not to exceed in the aggregate \$500,000.00, exclusive of the amount herein and heretofore appropriated." Under this provision the contract has been awarded and according to this plan work is now in progress.⁴³

The appropriations for this work have been as follows:⁴⁴

May 20, 1826	\$ 10,000.00
March 2, 1829	20,000.00
June 23, 1834	10,000.00
March 3, 1835	17,997.60
March 3, 1837	50,000.00
July 7, 1838	50,000.00
August 30, 1852	50,000.00
March 3, 1857	20,833.08
	(Relief claim)
July 11, 1870	50,000.08
March 3, 1871	50,000.08

⁴³ Report of Major Wm. I. Rossell, July 20, 1896; and July 20, 1899.

⁴⁴ Reports of Engineers and Statutes at Large.

June 10, 1872	.....	\$ 75,000.00
March 3, 1873	.....	100,000.08
June 23, 1874	.....	100,000.08
March 3, 1875	.....	26,000.08
June 18, 1878	.....	10,000.08
March 3, 1879	.....	100,000.08
June 14, 1880	.....	125,000.08
March 3, 1881	.....	100,000.00
August 2, 1882	.....	125,000.00
July 5, 1884	.....	200,000.00
August 6, 1886	.....	90,000.00
August 11, 1888	.....	250,000.00
September 19, 1890	.....	350,000.00
July 13, 1892	.....	212,500.00
March 3, 1893	.....	500,000.00
August 18, 1894	.....	390,000.00
March 2, 1895	.....	291,300.00
March 16, 1896	.....	160,000.00
June 3, 1896	60,000.00
June 4, 1897	25,000.00
July 1, 1898	30,000.00
March 3, 1899	100,000.00
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Total	\$3,748,630.68

As will be seen from the above appropriations this work was neglected by the Federal Government between the years 1857 and 1870. The channel was found to have shoaled to seven and a half feet at Choctaw Pass in 1860.⁴⁵ The matter was brought to the attention of the State Legislature and an act was passed on February 21, 1860, appointing a "Board of Harbor Commissioners" who were to "deepen and improve the bay and harbor." Funds with which to operate were to be raised by issuing bonds of Mobile County not to exceed \$800,000.00. To meet these bonds and accruing interest the county officials were empowered to assess the people of Mobile County at the rate of twenty cents on every hundred dollars. The state as an aid to the work, was to give one-fifth of all revenues collected by the state from that county. When the improvements made should enable vessels of eight feet

⁴⁵ Acts of Alabama, 1859-60.

draught to approach the city wharves, at low tide, then six cents per ton were authorized to be charged on all cargoes until the debt was discharged. The act required that the consent of Congress should be obtained. It appears that Congress did not approve the plan and nothing was done.

In 1867, the citizens of Mobile County procured the passage of another act of the Legislature appointing a Board for the prosecution of this work and requiring that the Revenue Commissioners of Mobile County should issue bonds (county) to the amount of \$1,000,000.00⁴⁶ for this purpose. About \$200,000.00⁴⁷ were thus raised and expended by Mobile County before the repeal of the act by the Legislature of 1872-3. From these efforts no permanent improvements resulted. In 1870 the work was resumed by the Federal Government and since that date has gone steadily forward, gradually admitting to the city wharves vessels of heavier and heavier draft. A letter from Mr. A. C. Danner, of Mobile, to Major Rossell, on June 9, 1896, states that "Mobile's tonnage movement for a period of nine years shows an increase of 458 per cent up to September 1, ultimo, and every month during the current year shows a steady and continuous increase of use for the channel."⁴⁸ Between 1896 and 1899, there was an increase of 32 per cent in the tonnage of timber, lumber, shingles, staves and cotton passing through this port.⁴⁹

(10) THE TOMBIGBEE.—The work done on this stream is divided into the following sections:

- (a) From Walker's Bridge, Mississippi, to Fulton, Mississippi, a distance of two and three quarter miles;
- (b) From Fulton to Columbus, Mississippi, fourteen miles;

⁴⁶ Acts of Legislature, 1866-67, p. 507.

⁴⁷ Memorial and proceedings of the Rivers and Harbors Improvement Convention: Assembled at Tuscaloosa, Alabama, 1885, p. 35.

⁴⁸ Report of Major Rossell, 1899.

⁴⁹ Report of Major Rossell, 1899.

(c) From Columbus to Demopolis, Alabama, one hundred and fifty six miles;

(d) From Demopolis to the mouth of the Tombigbee, at its junction with the Alabama, a distance of one hundred and ninety-one miles. The improvements thus cover a distance of five hundred and fifteen and three quarter miles.⁵⁰

(a) The plan on this portion has been to secure and maintain a channel for high-water navigation by the removal of snags, logs and overhanging trees. Appropriations toward this end began with the act of August 11, 1888, and from that date to the last River and Harbor bill of March 3, 1899, have amounted to \$14,000.00 for this section. Work was promptly begun in 1888 and a channel has been secured which, at a rise of three feet above low water, is navigable by boats of light draft and by the many rafts of timber which are sent down the river to Mobile from this section. (b) The plan for section (a) is practically the same as that for section (b), from Fulton to Columbus. Work on this second division, however, began earlier than on the first, and dates back to the survey authorized by act of June 10, 1872. This project was completed in 1882 with a total expenditure to that date of \$27,293.65, from the funds allotted to the Warrior and Tombigbee Rivers.⁵¹ For the maintenance of this improvement separate appropriations began with the act of July 13, 1892, and aggregated \$23,000.00 including the amount carried by act of March 3, 1899.⁵²

(c) From Columbus to Demopolis the plan is to obtain a channel six feet deep at low water and maintain it by snagging and dredging and by constructing locks and dams.⁵³ Up to the year 1890 work was done from the

⁵⁰ Report of Major Rossell, 1896.

⁵¹ Report of Major Rossell, 1896 and 1899.

⁵² Report of Major Rossell, 1899; and Statutes at Large, vol. xxx, p. 1139.

⁵³ Rossell's Report for 1899.

appropriations made to the "Warrior and Tombigbee Rivers" and (after 1880) to the "Tombigbee from Columbus to Vienna." In 1890 specific appropriations began for this section and from that date, September 19, to March 3, 1899, inclusive, \$160,000.00 have been allotted this division.

(d) From Demopolis to the mouth of the Tombigbee was improved by works of a temporary character between 1870, when the first surveys were made, and 1888. In the latter year an act, of August 11, directed a new survey to be made. The project adopted under this survey is to obtain by snagging and dredging a channel of six feet at low water, and to overcome the chief obstruction, McGraw Shoals one hundred and eleven miles above Mobile, by locks and dams. To 1890 the funds for this section were allotted from the appropriations to the Warrior and Tombigbee rivers, and the exact amount expended here is not known. In this year the appropriations become separate for this division and including the amount of March 3, 1899, aggregate \$380,000.00.

A summary of the appropriations for the Tombigbee River would then be as follows:

For Warrior and Tombigbee from

March 3, 1875, to March 3, 1879⁵⁴ \$110,000.00

For Tombigbee

June 14, 1880	\$ 31,000.00
March 3, 1881	15,378.00
August 2, 1882	21,000.00
July 5, 1884	25,000.00
August 5, 1886	18,750.00
August 11, 1888	12,500.00
On Section (a) 1886-1899	14,000.00
On Section (b) 1892-1899	23,000.00
On Section (c) 1890-1899	160,000.00
On Section (d) 1890-1899	380,000.00
 Total	 \$810,628.00 ⁵⁵

⁵⁴ Between these dates appropriations were made to those two rivers collectively and it is impossible to determine from the reports submitted the amounts expended on each separate river.

⁵⁵ Acts of Alabama, December 19, 1837.

To this amount must be added the \$25,000.00 appropriated by the State Legislature from the three per cent fund.

(11) THE WARRIOR.—This river extends from its junction with the Tombigbee at Demopolis, to Tuscaloosa, a distance of one hundred and thirty miles. Above Tuscaloosa the stream is known as the Black Warrior. In its original condition the Warrior was so obstructed that its channel was not navigable except during high water and then navigation was extremely difficult and hazardous. The first survey was made in 1874. The first appropriation was made and in June following, work was begun. The improvements made up to 1890 were of a temporary character. In that year a new plan was adopted which proposed to obtain a channel of six feet depth by the removal of logs and snags and overhanging trees and by the construction of locks and dams.⁵⁶ Six of the latter will be required between Tuscaloosa and Demopolis. The act of March 3, 1899, provides for the making of contracts for the construction of three of these locks and dams "next below Tuscaloosa"⁵⁷ and under these conditions work is now in progress.

Prior to 1879 the work done was by funds from the appropriations to the Warrior and Tombigbee.⁵⁸ Since that date separate appropriations have been made for the Warrior as follows:⁵⁹

June 4, 1880	\$ 20,000.00
March 3, 1881	10,622.00
August 2, 1882	111,000.00
July 5, 1884	12,000.00
August 5, 1886	18,750.00
August 11, 1888	18,000.00
September 19, 1890	45,000.00
July 13, 1892	75,000.00

⁵⁶ Report of Major Rossell, 1896.

⁵⁷ Statutes at Large, vol. xxx.

⁵⁸ Summarized above under the Tombigbee.

⁵⁹ Report of Major Rossell, 1879.

August 11, 1894	\$ 40,000.00
June 3, 1896	70,000.00
March 3, 1899	220,000.00
Total	\$539,372.00

(12) THE BLACK WARRIOR.—A large section of North Alabama, estimated at eight thousand square miles is drained by this river. The lands which skirt the river are fertile and productive and along its banks are found large and valuable deposits of coal. To get water transportation from the "Warrior Coal Fields" to Mobile is the main object for which improvements have been undertaken, both on the Black Warrior and the Warrior rivers. The improvements on the Black Warrior cover a distance of fifteen miles, from Tuscaloosa to Daniels Creek. The present project for improvement was adopted in 1887 and proposes to construct five locks and fixed dams with a total lift of fifty-two feet. Work toward this end began in 1888 and three of the locks have been completed. On March 3, 1899, provision was made for the construction of the fourth lock and work is now in progress.⁶⁰

The appropriations have been as follows:

July 5, 1884	\$ 50,000.00
August 1, 1886	56,250.00
August 11, 1888	100,000.00
September 1, 1890	150,000.00
July 13, 1892	200,000.00
August 18, 1894	37,500.00
June 3, 1896	10,000.00
March 3, 1899	50,000.00
Total	\$653,750.00

The State Legislature appropriated,⁶¹ in addition to this amount \$20,000.00 to this river from the three per cent fund, as has been already mentioned in another connection.

⁶⁰ Report of Major Rossell, 1896 and 1899.

⁶¹ Acts of Alabama, February 7, 1839.

Including the original land grant for the Tennessee River, the amounts expended by the Federal Government upon these items of improvement as above enumerated aggregate \$14,186,106.71. Thus Alabama has received about two-thirds of one per cent of the amount which has been expended by the government upon such works in the various states of the Union.⁶² In the projects now in execution for the improvements of the Alabama rivers the chief object is to accelerate the development of her mineral resources by giving water transportation to the gulf. It is estimated that when the present plans are completed coal can be carried to Mobile at a charge of twenty-five cents per ton, while the present rate by rail is one dollar per ton. With this reduction in freight rate coal can be delivered to vessels in Mobile at not exceeding \$1.25 per short ton, and Alabama would be enabled to compete with England as an exporter of coal to South America and in the East, and West Indies.⁶³ In paging through the acts of Alabama one is impressed with the fact that water transportation has been of vital importance to the state. In the early days her rivers and their small tributary creeks served as her chief arteries of trade. Numerous acts incorporating "Navigation Companies" show that practically all the rivers in the state, even the smallest, were once used as lines of transportation. During the twenties, thirties and forties we find the tributaries to these rivers, the majority of them insignificant creeks, are declared by successive acts of the Legislature as "public highways" and to fell trees across them, to throw logs into them, or to otherwise obstruct their passage was declared a public offense and punishable by law. With the development of Alabama's railroad system the great majority of these old lines have been abandoned and only the fittest have sur-

⁶² Proceedings of the Rivers and Harbors Improvement Convention (Tuscaloosa, 1897), p. 48: Address of General Joseph Wheeler.

⁶³ Proceedings of the Rivers and Harbors Improvement Convention, 1897, pp. 35-36.

vived. With this transformation has come a shifting of trade and business from the old conservative villages which slumber on the river's edge to the more active and spirited railroad points. While the greater portion of the business in Alabama is now done by railroads yet the influence of the rivers as competitors is most potent in guaranteeing reasonable rates. When the rivers are in boating order freights are low and, *vice versa*, low rivers make high rates.⁶⁴ Thus in Alabama as in other states of the Union, observation and experience point to the fact that the maintenance of a good system of water transportation affords the most effective safeguard against the potential evils of railroad consolidations which tend to throttle competition.

⁶⁴ This fact is illustrated in the report on the Tombigbee for 1881. When the river, a competing line with the Mobile and Ohio Railroad, is navigable, freight charges are reduced by the railroad. In 1879-80 the charge on cotton per bale was \$3.25 by rail during the low-water season. When the Tombigbee became navigable rates prevailed ranging only from 50c. to \$1.25 per bale. Memorial and Proceedings of Rivers and Harbors Improvement Convention, 1885, pp. 53-54.

CHAPTER III

CONSTRUCTION OF RAILROADS

FEDERAL LAND GRANTS

The policy of Federal aid to railway building as with other forms of internal improvement has been a gradual growth. Legislation has proceeded not by sudden and radical measures differing from all precedent, but by small beginnings which gradually prepared the public mind for the more elaborate schemes which were to follow. From the policy of aid to wagon roads, canals, river and harbor improvements, we have been brought to the idea of small encouragement of railroad building. The granting of "rights of way" through the public domains to various railroad companies together with small lots of land for the erection of stations served as the precedents upon which was to be based the system of more positive aid by large grants of public land. Congress by act of March 2, 1827¹ gave to the state of Indiana a large tract of land to aid in constructing the Wabash and Erie Canal. On March 2, 1833² Congress authorized the state of Illinois to divert its canal grant and to use the proceeds from these lands in the construction of a railroad should the latter seem preferable to a canal. This was the first congressional enactment providing for a land grant in aid of a railroad.³ This privilege was not utilized by the state, but the act serves to show the growth of the feeling that if Congress could aid in making canals it could also aid in building

¹ U. S. Statutes at Large, vol. iv, p. 236.

² U. S. Statutes at Large, vol. iv, p. 662.

³ Public Land Commission, Exec. Doc., 3rd Sess., 46th Cong., Pts. i and iv, p. 261.

railroads, and points to the fact that public aid will increase to such works as enthusiasm mounts higher for improvements of this character. The first right of way (thirty feet on each side of its line) through the public lands for a railroad, from Tallahassee to St. Marks, with use of timbers and other building materials and ten acres of land as the terminus, was granted to a Florida company by act of March 3, 1835.⁴ From this time forward similar privileges were granted to various other railroad companies up to 1850 when was passed the first railroad act of any real importance. This act was skilfully engineered through Congress by Senator Douglas of Illinois in the interest of the Illinois Central Railroad, and initiated that system of Congressional land-grants which prevailed until after July 1, 1862.⁵ On the latter date a new system was inaugurated in aiding the Pacific railroads. Formerly the grants had been made to the state as guardians or trustees for the roads, thus yielding to the old contention that Congress could not create a corporation to do business in a state without the consent of that state. After 1862 this claim was disregarded, as were many others of the old State's Rights theories; the grants are now usually made to the corporation direct thus brushing aside the state as trustee or agent of transfer.⁶ Under these two systems (the granting of alternate sections⁷ either to the state or to the corporation direct) the Federal Government to June 30, 1880, had made railroad grants amounting to about two

⁴ U. S. Statutes at Large, vol. iv, p. 778.

⁵ Public Land Commission, pts. i and iv, p. 261.

⁶ Public Land Commission, pts. i and iv, p. 257.

⁷ This system was based on the claim that when the alternate sections were thus granted along the line of the railroad the sections retained by the Government would be enhanced in value. The price per acre, therefore, of the remaining contiguous sections was doubled, being raised from \$1.25 minimum price to \$2.50 per acre; thus it was contended the Government lost nothing by the grants. Speech of Senators Douglas and Shields, Cong. Globe, vol. xxi, pt. i, pp. 844-48.

hundred and fifteen million acres of land. In 1881 it was estimated that the amount would be reduced by forfeitures to 155,504,994 acres.⁸

The pioneer railroad bill was passed only after it had been closely debated.⁹ Senator Douglas, some years later, in speaking of its passage, remarks: "If any man ever passed a bill I did that one. I did the whole work and was devoted to it for two years." The bill was introduced in Congress in 1848 and was bitterly opposed by many (the Representatives and one of the Senators of Alabama among the number) both on account of inexpediency and because of constitutional objections.¹⁰ Senator Bagby of Alabama committed himself firmly to the opposition, "For myself," he said when speaking of the bill, "I shall consider it my duty to resist such propositions to the last—there is no soundness in the proposition and it is in vain to tell us that the constitutional question can be settled by precedent."¹¹ From the tone of the debates, however, it seemed to be a foregone conclusion that Senator Douglas's bill though fettered by constitutional objections, would finally be passed, and others manifested a desire to secure some of the good things while they were going. Thus while Senator Bagby was planting himself firmly in the opposition his colleague, Senator King, was busying himself with introducing bills carrying similar grants for prospective railroads in Alabama.¹² The bill in 1848 passed the Senate but failed in the House. In 1850 the project came forward again with brighter prospects. Senator King was one of the most ardent advocates while his colleague was no longer heard in the opposition. To the Mississippi representatives also the bill seems to have become less objectionable. In the meantime Senator Doug-

⁸ Public Lands, pts. i and iv, p. 268.

⁹ Cong. Globe, vol. xxi, pt. i, pp. 844-54 and 867-74.

¹⁰ Cong. Globe, Appendix to vol. xi, pp. 534-37.

¹¹ Cong. Globe, 1st Sess. 30th Cong., Appendix, p. 535.

¹² Cong. Globe, 1st Sess., 30th Cong., 1848, pp. 999, 1038, 1051.

las had heard that the Mobile Railroad, then building, had failed for want of means. Going to Mobile he met the directors of the railroad company and proposed to procure a land grant for that road by making it a part of his Illinois Central Railroad bill, provided the Representatives and Senators from Alabama and Mississippi (the two states most interested in the success of the Mobile Railroad) would support his measure. The proposition was accepted, Senator Douglas returned to Washington, and through the influence of the directors of the Mobile road the legislatures of Alabama and Mississippi instructed their Congressmen and Senators to support the bill after it had been so amended as to carry for these states privileges proportionately equal to those gained for Illinois.¹³ With all dignity and deference the amendment offered by King¹⁴ was accepted by Douglas. The bill now assumed, in the eyes of some, a more constitutional aspect. The opposition was so weakened that by further skilful manipulation it was finally passed by a small majority and became a law on September 20, 1850. The act granted to the state of Illinois, for the purpose of aiding in making the Illinois Central Railroad and its branches, "every alternate section of land designated by even numbers, for six sections in width on each side of said road and branches,"¹⁵ and carried for Illinois 2,595,053 acres of land.¹⁶ The amendment (section 7 of the act) is as follows: "And be it further enacted, that in order to aid in the construction of said Central Railroad from the mouth of the Ohio River to the City of Mobile, all the rights, privileges and liabilities hereinbefore conferred on the State of Illinois shall be granted to the States of Alabama and Mississippi respectively, for the purpose of aiding in the construction of a railroad from said City of Mobile to a point near the mouth of the Ohio River,

¹³ Public Land Commission, pts. i and iv, p. 263.

¹⁴ Cong. Globe, vol. xxi, pt. i, p. 845.

¹⁵ Public Land Commission, pts. ii and iii, p. 180.

¹⁶ Public Land Commission, pts. ii and iii, p. 180.

and that public lands of the United States, to the same extent in proportion to the length of the road, on the same terms, limitations and restrictions in every respect, shall be, and are hereby, granted to said States of Alabama and Mississippi respectively." Under this act and others based upon it as precedent the state of Alabama has received the following amounts of land granted as aid to railroad building:¹⁷

	ACRES.
Mobile & Ohio, September 20, 1850.....	419,528.44
Alabama & Florida, May 17, 1856.....	399,022.84
Selma, Rome & Dalton, ¹⁸ June 3, 1856.....	858,515.98
Alabama & Chattanooga, June 3, 1856.....	652,966.66
South & North Alabama, June 3, 1856.....	445,158.78
Mobile & Girard, ¹⁹ June 3, 1856.....	302,181.16
 Total	 3,077,373.86 ²⁰

The Two and Three Per Cent Funds.—Congress by act providing for the admission of Ohio into the Union declared that²¹ "One-twentieth part of the net proceeds of the lands lying within the said state sold by Congress, from and after the thirtieth day of June (1802) . . . shall be applied to laying out and making public roads leading from the navigable waters emptying into the Atlantic to the Ohio, to the said state and through same, such roads to be laid out under the authority of Congress, with the consent of the several states through which the road shall

¹⁷ Taken from Report of Secretary of Public Lands, 1897. House Documents, vol. xii, p. 225. Amounts indicate the number of acres granted up to June 30, 1897.

¹⁸ The original act made the grant to aid the Alabama and Tennessee Railroad; a later act transferred the lands to the Selma, Rome and Dalton road.

¹⁹ The original grant carried 504,145.86 acres, but owing to forfeitures this was reduced to the above amount by an adjustment made April 24, 1893.

²⁰ In addition to this, 67,784.96 acres were granted Alabama for the Coosa and Tennessee road. Of the construction of the road there was no evidence found in the General Land Office up to 1897 and the grant is supposed to have lapsed.

²¹ Statutes at Large, vol. ii, p. 173, April 30, 1802.

pass." All public lands in Ohio were to be exempt from taxation by the state for a term of five years from the date of their purchase by settlers and this five per cent of the land sales was offered as one of the items of compensation to the state for this relief given to her immigrants. The people of Ohio in accepting the terms for her admission requested that three-fifths of this fund might be applied to making roads within her borders under the control and supervision of the State Legislature, while the remaining two-fifths was to be expended by Congress in making roads leading to the state. This proposal was accepted by Congress and found expression in the modified act for Ohio's admission into the Union.²² Thus originated the custom according to which so many of our states, upon their admission, were given their "two and three per cent funds" on the same condition under which Ohio received hers. On March 2, 1819, Congress passed the act providing for the admission of Alabama into the Union. Under this law five per cent of the net proceeds of the lands lying within the territory of Alabama and sold by Congress from and after the first day of September, 1819, was "reserved for making public roads, canals, and improving the navigation of rivers" three-fifths to be applied within the state under the direction of the State Legislature "and two-fifths to the making of a road or roads leading to the said state under the direction of Congress."²³ Thus originated what was designated the "two and three per cent fund" and which was the subject of so much discussion and controversy in the history of Alabama's legislation. Congress constructed no road leading to the state and up to September 4, 1841, no disposition had been made of the two per cent fund. On that date Congress passed an act²⁴ relinquishing this fund to the state of

²² Act of March 3, 1803, Statutes at Large, vol. ii, p. 225.

²³ Statutes at Large, vol. 3, p. 491.

²⁴ Statutes at Large, vol. v, p. 457, sec. 17.

Alabama on condition that the fund should be "faithfully applied under the direction of the Legislature of Alabama, to the connection by some means of internal improvement, of the navigable waters of the Bay of Mobile with the Tennessee River, and to the construction of a continuous line of internal improvements from a point on the Chattahoochee River opposite West Point, in Georgia, across the state of Alabama, in a direction to Jackson in the state of Mississippi." The terms were accepted and the state became thus the sole trustee for both funds. The Legislature by act of December 10, 1823, invested the three per cent fund in the State Bank of Alabama, making it an integral part of the capital of that institution and only \$135,000²⁵ was expended in efforts at internal improvements. With the failure of the bank the whole of the fund was lost. In 1859 a joint Committee from the two Houses of the Assembly reported that the state of Alabama as trustee was responsible for all moneys which had been received, together with interest at six per cent, from the dates upon which the amounts had been paid by the United States. According to this view the state owed to this three per cent fund \$858,498. With this report the Legislature concurred. The amount assumed by the state as her indebtedness to the fund, was distributed, as loans, to various railroad enterprises as follows.²⁷

North East and South West Railroad Co.	.....	\$218,135.00
Wills Valley Railroad Co.	.....	75,000.00
Selma and Gulf Railroad Co.	.....	40,000.00
Cahaba, Marion and Greensboro Railroad Co.	.....	25,000.00
Opelika and Oxford Railroad Co.	.....	50,000.00
Montgomery and Eufaula Railroad Co.	.....	30,000.00
Tennessee and Coosa Railroad Co.	.....	195,363.00
Alabama and Tennessee River Railroad Co.	.....	225,000.00
 Total	.....	\$858,498.00

²⁵ Acts 1837-39. Spent on rivers in the state, as detailed in the previous chapter.

²⁶ By Act approved February 18, 1860.

²⁷ Auditor's Report, October 12, 1869.

These loans were to bear interest at the rate of six per cent and were secured by bonds. By act of December 30, 1868, the "South and North Alabama Railroad Co." was given the entire fund. All the bonds, securities and obligations belonging to this fund were transferred to the company, and the state was released from all liabilities, and control over the fund passed to this railroad as sole beneficiary.

The two per cent fund passed to state control in 1841 under the conditions which have been already given. From this fund loans were made as follows:²⁸

Montgomery and Eufaula Railroad, March 1, 1845.....	\$116,782.64
Marengo Plank Road Co., December 13, 1853.....	9,477.47
Alabama and Mississippi Rivers Railroad Co., Feb. 27, 1855	28,963.72
Alabama and Mississippi Rivers Railroad Co., Feb. 15, 1858	<u>23,178.74</u>
Total	\$178,402.57

The above amounts contributed to the completion of the East and West line of internal improvements across the state.

Alabama and Tennessee River Railroad, May 3, 1851...	\$ 65,961.73
Alabama and Tennessee River Railroad, May 5, 1852...	62,179.83
Alabama and Tennessee River Railroad, April 26, 1855..	17,726.47
Alabama and Tennessee River Railroad, Feb. 15, 1858...	23,178.78
Tennessee and Coosa River Railroad Co., Feb. 15, 1856..	<u>33,513.25</u>
Total	\$202,560.06

These amounts contributed to the completion of that plan so long discussed and cherished by the people of Alabama—the connection of North and South Alabama by some line of transportation. Thus, too, were fulfilled the conditions upon which the two per cent fund was surrendered by Congress to state control. By act of December 30, 1868, the South and North Alabama Railroad was declared the beneficiary of the two and three per cent funds.

²⁸ Auditor's Report, October 12, 1869.

The greater portion of this two per cent fund was now in the hands of various railroad companies to whom loans had been made for the purpose of encouraging the several railroad projects throughout the state. In accordance with this act of 1868 the bonds and securities executed by these railroad companies were delivered to the "South and North Alabama Railroad Co." and were as follows:

North East and South West Alabama Railroad Co.....	\$306,468.00
Wills Valley Railroad Co.....	87,375.00
Alabama and Mississippi Railroad Co.....	66,500.00
Montgomery and Eufaula Railroad Co.....	36,051.84
Opelika and Oxford Railroad Co.....	66,500.00
Cahaba, Marion and Greensboro Railroad Co.....	38,611.75

Total \$601,506.59²⁹

Thus the bulk of the "two and three per cent fund" was bestowed upon the "South and North Alabama Railroad." This road was put in operation in 1872. It connects Decatur, Alabama, on the Tennessee, with Montgomery, on the Alabama River. The road has one hundred and eighty-five miles³⁰ of track and is now operated as a part of the Louisville and Nashville system.³¹

STATE AID: POLICY PRIOR TO CIVIL WAR.

In 1832-3 was constructed the first railroad in Alabama. This road ran from Decatur to Tuscumbia.³² This was followed by the construction of the Western Railroad from Selma by Montgomery to the eastern boundary of Alabama, the second line of the state. From this time an interest in railroad building grew apace, and there developed a strong feeling among the people that the state should render some positive aid towards improvements of this character.³³ Various obstacles, however, prevented

²⁹ Auditor's Report, October 12, 1869.

³⁰ Berney's Hand-Book of Alabama, p. 385.

³¹ Report of the Alabama Railroad Commissioners, 1898.

³² Brewer: History of Alabama.

³³ Governor's Message of November, 1834, November, 1835, November, 1836, December, 1839.

this feeling from finding expression in any legislative acts. In 1851 the Committee on Internal Improvements made their report to the Legislature of Alabama in which the policy of the state was reviewed as follows:

"The history of Alabama from the first of the state to the present period exhibits not one serious effort on the part of the Legislature to advance the great interests of agriculture, commerce or manufactures, which by the form of our government are subjected to its protection and control. Other states are rich because they are old, but our destiny seems to be to grow old and poor together. The caravan of the emigrant tells the fate of a young state falling into premature decay and deserted for fresher lands which in time will probably be doomed to the same fate." The state, it is urged, must do something to "consolidate her northern and southern sections," she must give her citizens an "access to market," that her people become "anchored to the soil" and lose their "desire for wandering to the Far West."³⁴ The report mentioned the fact that other states were forging ahead in such works. To items of internal improvement Virginia had recently subscribed eight million dollars; Maryland five millions; New York three millions as a bonus to one enterprise alone, the Erie Railroad; Massachusetts six millions; Missouri two millions to the St. Louis and Pacific Railroad; Tennessee one million three hundred thousand loaned to the Chattanooga Railroad; Georgia three and a half millions to one road. The report urged that Alabama should enlist in aiding similar enterprises and recommended that the existing Legislature endorse railroad bonds to the extent of two million dollars. Regardless of this enthusiastic appeal the Legislature would not commit the state to a positive policy of internal improvements. Several causes may be assigned as explaining the persistent lethargy or conservatism on

³⁴ Report of F. Phillips, Chairman of Committee on Internal Improvements: House Journal, 1851-52.

the part of the state. In the first place the state's finances had not yet recovered from the collapse which came with the failure of her bank; taxation was still high, the people were sensitive to every touch of the tax-gatherer and many of them stood ready to oppose any measure which threatened a higher tax rate. Again the management and success of the old state bank had not been of such a nature as to inspire confidence in the integrity or ability of the state as an undertaker. Those who opposed the policy of state aid used this as one of their strongest arguments, reminding the people very effectively that the state's past record as an *entrepreneur* was one not altogether glorious. A third cause may be found in the fact that there was a strong element in the population of Alabama which was restless, roving, shifting, and actuated by a spirit of exploitation rather than development, not feeling sure that they were permanently located, but thinking of the more distant West as the place of final destination.³⁵ This element acted as a check to the spirit of internal improvements; for a system of such works, whose completion will require an extended period of time, and whose fruits must be reaped at some future date, will be advocated only by those who feel themselves permanently at home and deeply rooted to the soil. There are traces also of sectional jealousies creating friction and retarding legislation. Finally Alabama was proverbially of the "strict construction" school; many of her leading statesmen firmly adhered to the principle that taxation should only be employed for carrying on government and that the promotion of works of internal improvements should be left to private capital. In 1853 the subject of state aid to railroads was made one of the issues of the state's political campaign.³⁶ John

³⁵ In 1845-47 there was a strong tide of emigration from Alabama to Texas. In 1846 Monroe County alone is said to have thus lost 1500 of her inhabitants. Lyell: Travels in the United States, vol. ii, pp. 55-65.

³⁶ Garnett: Reminiscences, pp. 577, 580-82.

A. Winston planted himself firmly on the side of opposition to public aid and was the successful candidate for Governor. In his inaugural address on December 20, 1853, he declared his unwillingness that the state should engage in works of internal improvement, or become security for such, until the whole public debt should be paid. During this session of the Legislature this question was one of the chief topics of discussion. The spirit of conservatism, however, again prevailed and the Governor's views were sustained. The election in 1855, showed that the policy of the administration was highly endorsed by the people: Governor Winston was reelected by a large majority, having received the largest popular vote that had ever been cast in the state for any candidate for the Executive.³⁷ The Legislature which met in the following December came fully determined to launch the state into a policy of public aid to railroads. The Governor was more determined that such a principle should not be established, and by his frequent exercise of the veto power he became known as the "Veto Governor" of Alabama. During this session of the Legislature he returned, without his approval, thirty-three bills which carried loans or other advantages to railroads. In vetoing one of these bills,³⁸ the Governor expressed his views at some length and assigns the following reasons for withholding his approval: (1) By the bill the tax-payers of Limestone County, many of them without consenting, will be forced to become stockholders in a private corporation. "Many able jurists and profound statesmen are firm in the conviction that such a forced law, or investment, is unwarranted by the constitution or by any legitimate influence from the principles of our government." The bill cannot be justi-

³⁷ Garnett: *Reminiscences*, p. 616.

³⁸ The bill was to enable Limestone County to subscribe \$200,000 to the capital stock of the "Tennessee and Alabama Central Railroad Co." and was passed over the Governor's veto on December 14, 1855. *Acts of Alabama*.

fied by precedent, for to the enlightened statesman belongs "the duty of correcting errors, which, though consecrated by centuries of toleration and backed and propped by a thousand precedents, are but errors still."

(2) It is better "that the construction of railroads, as well as all other improvements of supposed public utility be left to the slower and safer details of interest, rather than resort to the doubtful power of making the people involuntary builders." The objects, "few and simple," of our government are to "protect every man in the legal pursuit of wealth and happiness and in the enjoyment of the fruits of his own labors." This proposition defeats such objects, it opens the door to "anarchy and to the legislative and judicial confiscation of the labor and property of the individual for the use of others. It is an act of legislative usurpation, and destructive of a government founded on justice." Thus deeming the measure both inexpedient and unconstitutional he was assured that his disapproval would be vindicated both by results and by popular approval.³⁹ Again on January 9, 1856,⁴⁰ he reiterated the doctrine that "the only purpose for which the government has a right to tax is to carry on the affairs of the government and to pay obligations already existing. The experience of Alabama is fruitful of the bitter consequence of making expediency paramount to principle. The proposition to use the credit of the state to promote the pecuniary interests of any class of citizens has, almost without any opposition, been pronounced against by the people of Alabama;" for he had been elected to the Executive with the "full understanding" that he would not "sanction any measure using or pledging the credit of the state for any purpose whatever." Again, there was no money in the Treasury available for loans to railroads unless the bills of the old state bank and branches be

³⁹ Message of December 13, 1855. House Journal, p. 162.

⁴⁰ Senate Journal, p. 146.

reissued. To reissue these bills of banks long since put in liquidation would be an unconstitutional measure⁴¹ and would result in giving the state a depreciated currency, a policy most ruinous to financial interests. Regardless of the Governor's firm opposition and over his unequivocal vetoes laws were passed granting loans to railroads as follows:

Alabama and Tennessee Rivers Railroad Co., January 21,
1856 \$200,000.00
Memphis and Charleston Railroad Co., January 21, 1856 300,000.00

The acts provided that the loans should be secured by first mortgage interest bearing bonds and also by "personal securities to be approved by the Governor." The impression prevailed that the Governor had little confidence in the solvency of railroad companies and that he would be rather exacting in applying the "personal security" clause. At any rate the loans were never called for before later acts⁴² repealed the laws authorizing such loans. Governor Winston in his annual message of 1857 rather congratulated himself upon the prosperity and success which had resulted from the triumph of the policy to which he had persistently adhered. "By a firm and steady course of patient endurance and economy, the greater portion of an enormous debt incurred by financial empirics and a departure from the legitimate purposes of government has been liquidated; and the credit of Alabama not only sustained untarnished, but restored to that high position which it should be our first duty to maintain for it. By a steady resistance to the policy of over-zealous enthusiasts and interested incorporations, we have

⁴¹ The position was held that it would now be the state issuing "bills of credit" since the banks were in process of liquidation. Up to this time, however, the bills had continued in use and no serious objection had been raised, though the constitutionality of the practice had been often questioned. U. S. Constitution: Art. i, Section 10.

⁴² Passed February 6, 1858.

been enabled to avoid that load of responsibility and debt which has been incurred by older and greater states, and which for generations must rest upon their people and retard their progress. The correctness of the principle of an entire separation of state from private enterprises and speculations, and leaving to individual energy and private capital the construction of such works as the facilities of commerce may require, is being established by time and the experience of other states, to such a degree as to give us abundant cause for congratulation that we have been able to resist a popular error, though subjecting ourselves to the taunts and reproaches of those who adopted a different policy. It is well for states and individuals to be behind the spirit of the age when that spirit impels us only to embarrassment and bankruptcy. When we see works of magnificent extent and grandeur, constructed at a cost almost too great for belief pronounced, as state works, failures, and thrown upon the market for the purpose of relieving the people of the expense of keeping them up, we have abundant cause to be thankful that we are not in a like predicament, and that we took warning in time." The people of other states were burdened with taxation to support works which they had been persuaded would give relief from all taxes and "furnish the revenue for the carrying on of the state government." "The constitution," he continued "gives no power to tax the masses that any particular class or interest may be advanced. The only just object of taxation is to meet the wants of government, economically administered, and to secure the ends of public justice. Whenever a government extorts more than is absolutely necessary for these purposes it becomes an oppression."

"The first duty of the state is to pay what she now owes and then avoid the accumulation of any surplus by a speedy reduction in the rate of taxation. The loans granted the several railroad companies, by acts of the last Legislature, have not been called for; and had application

been made it would have been in vain on account of lack of funds, and to have re-issued the bills or notes of the old state banks, long since in liquidation would have been violating the Constitution of the United States." ⁴³ Thus subsided the strongest wave of enthusiasm that had yet made for state aid to internal improvements in Alabama. This, too, was the last effort made prior to the Civil War to launch the state into such a policy.

State Aid: Since the Civil War.—In 1867 the agitation was renewed and Alabama, for the first time in her history, adopted a policy of public aid to railroad building. During the session of 1866-7 the Legislature passed an "Act to establish a system of internal improvements in the State of Alabama." The act declared that "whenever any railroad company now incorporated by the General Assembly of the state of Alabama, should have finished, completed and equipped twenty continuous miles of road at either or both ends of the road it should be the duty of the Governor of the state, and he is hereby required to endorse, on the part of the state, the first mortgage bonds of the said railroad company to the extent of twelve thousand dollars per mile for that portion thus finished, completed and equipped, and when a second section of twenty miles is finished, completed and equipped, it shall be the duty of the Governor, and he is hereby required to endorse the first mortgage bonds of the said railroad company, upon the presentation of said mortgage bonds by said company, to the extent of twelve thousand dollars per mile for the second section of twenty miles, and this rate and extent of endorsement shall be continuous upon the same condition for each subsequent section of twenty miles until said railroad is completed." On August 7, 1868 ⁴⁴ the above act was amended. After the completion of the first twenty miles the bonds should be endorsed as under the

⁴³ House Journal, p. 18, Session 1857-58.

⁴⁴ Acts of Alabama, 1865, p. 17.

original act, "and when a second section of five miles is finished, completed and equipped it shall be the duty of the Governor and he is hereby required to endorse the first mortgage bonds of said railroad company to the extent of twelve thousand dollars per mile for the second section of five miles, and this rate and extent of endorsement shall be continued upon the same condition for each subsequent section of five miles, until said road is completed."⁴⁵ In 1868 William H. Smith, the Provisional Governor of the state, in his message to the Legislature reviewed the policy of the state toward internal improvements under the old regime, and suggests that more progressive measures be adopted in the future. "The same system of labor which imposed ignorance heretofore upon the masses of the community led our law makers to neglect the elements of wealth with which Alabama is blessed beyond almost any other state—to change our policy in regard to these interests, to foster every enterprise that seeks to develop the natural wealth of the state and attract hither a great portion of the great tide of the foreign immigration as well as of the skilled laborers and capital of the North will be a pleasant and profitable task, and will doubtless engage your early and earnest attention."⁴⁶ The legislative halls were thus filled with that spirit of progress which was born in the first flushes of the new regime. There are evidences, too, that some of the members were peculiarly susceptible to those mercenary influences which have been quite potent in the legislative history of so many of our states when dealing with large corporate interests. A plan yet more positive was adopted by act approved September 22, 1868. The rate, or extent, of endorsement was now increased to sixteen thousand dollars per mile. After the completing and equipment of the first twenty miles the first bonds should be endorsed and the endorsement should be repeated at the completion

⁴⁵ Acts of Alabama, 1868, p. 198.

⁴⁶ Governor's Message, July 14, 1868.

of each subsequent five mile section. At this session of the Legislature was also passed "an Act to authorize the several counties and towns and cities of the State of Alabama to subscribe to the capital stock of such railroads throughout the state as they may consider most conducive to their respective interests."⁴⁷ The question of "Subscription" or "No subscription" was to be determined by the vote of "qualified electors" of the counties and towns whenever the president and directors of a railroad company should signify to the authorities (county commissioners, or mayors of municipalities) their desire to obtain loans on subscriptions to stock; then the said authorities were to order elections to be "conducted in the same manner and by the same officers as are now provided by law." If the vote should declare for "No subscription" it is declared lawful for the authorities to order a second election if the interested railroad company should make another application within twelve months. If a majority of the qualified voters declare for "Subscription" then bonds, to the extent of the amount voted, are required to be issued to the company in exchange for certificates of stock. The interest on the bonds is to be met by a tax levied and assessed by county commissioners or municipal authorities. The latter were given full power of procedure against the "tax-assessors and collectors and their sureties" for the amount of said taxes which they might fail or refuse to assess and collect. To put these loans or subscriptions on a firm basis the Legislature, by act approved March 1, 1870,⁴⁸ "legalized, ratified and confirmed in all respects" all acts and things of every kind heretofore done and performed in this state for railroad purposes, in substantial compliance with the provisions of the act of December 31, 1868. Under this act of 1868 many of the counties and municipal localities

⁴⁷ Acts of Alabama, 1868, p. 514.

⁴⁸ Acts of Alabama, 1869-70, p. 286.

in Alabama became liberal subscribers to railroad enterprises and incurred debts from which many have not even yet succeeded in extricating themselves, and no dividends have, as a rule, accrued to the shares owned in the railroad stocks.

The above loans authorized to be made by the state were to be secured by "first mortgage bonds." In 1869 the State Auditor referred to the fact that the value of roads which had secured loans, including all main and side tracks, all rolling stock, in fact, "everything that could be embraced by a first mortgage bond," was less than thirteen thousand dollars per mile, "full, fair and just valuation as per affidavits of the Presidents and Secretaries of the roads." He emphasizes the danger threatening the state from making loans at the rate of sixteen thousand dollars per mile, and urges that the law should be repealed.⁴⁹ Governor Smith, though an enthusiast for state aid, thought the law was too broad, and forced the state to aid in constructing local schemes of rival and jealous communities. As no end to the loans was in sight he recommended that the law be repealed.⁵⁰ The Legislature, however, did not concur in this view. "The railroads again triumph in the struggle. It is not my province to inquire how that triumph was effected," said Governor Lindsay in referring to the proceedings of this body.⁵¹

The general endorsement system was re-enacted,⁵² and additional and special aid was granted to four railroads as follows:

South & North Alabama Railroad Company, \$6,000 per mile added to former endorsement, thus making \$22,000 per mile for this road.⁵³

⁴⁹ Auditor's Report, October 1, 1869.

⁵⁰ Message of Governor, November 16, 1869.

⁵¹ Message of Governor Lindsay, January 24, 1871.

⁵² Act approved by Governor Smith, February 21, 1870. *Acts of Alabama, 1869-70*, p. 149.

⁵³ March 3, 1870, *Ibid.*, p. 374.

Alabama & Chattanooga Railroad Company, granted a loan of \$2,000,000.⁵⁴ this in addition to the endorsement already made by the state.

Montgomery & Eufaula Railroad Company, granted a loan of \$300,000 in addition to the regular endorsement of \$16,000 per mile.⁵⁵

Mobile & Montgomery Railroad Company, Governor to endorse on the part of the state bonds to the extent of \$2,500,000.⁵⁶

In his message of January 24, 1871, Governor Lindsay informed the Legislature that it was impossible to ascertain "to what extent bonds under the various statutes have been endorsed and issued by the state. Neither in the executive office, nor in any other office of the government, can be found a record of the action of the executive in this regard. I have no knowledge of the form of the bonds, except those of the Montgomery & Mobile and of the Montgomery & Eufaula Railroads; and, unless from rumors or unofficial information, I cannot even suppose the number of bonds endorsed to any company, the time when and where payable, or whether endorsed or issued according to law."⁵⁷ In this state of confusion the finances of Alabama remained until final adjustment was made during the administration of Governor S. Houston. The latter, on December 7, 1874, in a message to the Legislature,⁵⁸ recommended the enactment of a law providing for the ascertaining and final adjustment of the state's indebtedness. In practical conformity to the plan there suggested, the Legislature passed an act⁵⁹ authorizing the Governor to act as an "ex-officio member," with two others whom he should appoint, of a "board of commissioners,"

⁵⁴ February 25, 1870, *Ibid.*, p. 175.

⁵⁵ March 3, 1870, *Ibid.*, p. 376.

⁵⁶ February 25, 1870, *Ibid.*, p. 175.

⁵⁷ House Journal, 1870-71.

⁵⁸ Senate Journal, 1874-75, p. 106.

⁵⁹ Approved December 17, 1874. *Acts of Alabama, 1874-75*, p. 102.

whose duty it should be to "ascertain, liquidate and adjust the subsisting legal liabilities of the State of Alabama" the adjustment and settlement to be "approved and ratified by the General Assembly" before it becomes binding on the state. Levi W. Lawler and T. B. Bethea were appointed by Governor Houston and with him constituted the Board of Commissioners by which the settlement was finally arranged with the railroad companies.

The Commissioners, after having been engaged about twelve months in this work, submitted their report⁶⁰ to the Legislature on January 24, 1876. Owing to the incompleteness of the records of the bonds issued and endorsed, the Commissioners addressed inquiries to the bondholders through papers published in Alabama, New York and London. All creditors of the state were requested to present their claims for adjustment. It was thus ascertained that the indebtedness of the state was \$30,037,563, an amount "equal to one-fifth of all the property of the people" of the state.⁶¹ Of this amount a large share was incurred in the interest of railroad building, and was distributed as follows:⁶²

Alabama and Chattanooga Railroad ⁶³	\$7,300,000.00
Selma, Marion and Memphis	765,000.00
New Orleans and Selma.....	320,000.00
Selma and Gulf.....	640,000.00
East Alabama and Cincinnati.....	400,000.00
Montgomery and Eufaula ⁶⁴	1,580,000.00
Savannah and Memphis.....	<u>142,000.00</u>
	<u>\$11,147,000.00</u>
Unpaid interest due on these bonds to January 24, 1876	\$3,474,000.00
	<u>\$14,621,000.00</u>

⁶⁰ Senate Journal, 1875-76, p. 202-32.

⁶¹ *Ibid.*, p. 218.

⁶² *Ibid.*, p. 214.

⁶³ Endorsed bonds \$5,300,000 plus \$2,000,000 straight bonds. The endorsed bonds exceeded by \$580,000 the maximum amount authorized by any possible construction of the laws.

⁶⁴ Endorsed bonds \$1,280,000 plus \$300,000 straight bonds.

In addition to this amount, straight seven per cent interest-bearing bonds were held by the following railroads:⁶⁵

South and North Alabama.....	\$ 732,000.00
Grand Trunk	220,000.00
Savannah and Memphis	204,000.00
	<hr/>
	\$1,156,000.00

We thus have an indebtedness of \$15,777,000.00 to be adjusted by the Commissioners. The latter in their report recommend the following plan of adjustment: For the \$5,300,000.00 endorsed bonds of the Alabama & Chattanooga Railroad were to be issued \$1,000,000.00 in "new state direct bonds," bearing interest at four per cent and maturing in thirty years from their date. The \$2,000,000.00 of "straight" bonds loaned to the Alabama and Chattanooga Railroad were to be returned and delivered to the state of Alabama, and in exchange for these bonds the state should surrender all bonds and mortgages held against the road. Thus Alabama was to relinquish all claims to lands⁶⁶ and all other property belonging to the road, and in return was to be released from all liabilities to the road except the \$1,000,000.00 new bonds to be issued.⁶⁷

⁶⁵ An act of April 21, 1873 (Acts of Alabama, 1872-73, p. 45) authorized the Governor to issue these straight bonds at the rate of \$4,000 per mile to such roads as would relinquish all their endorsed bonds. Only the above three roads saw fit to make the exchange. These direct bonds of \$1,156,000 were received by these roads in exchange for \$5,103,000 of endorsed bonds. This latter amount added to the above sum \$11,147,000 gives us a total of \$16,250,000 of bonds loaned to, and endorsed for the various railroads during this period.

⁶⁶ The state held mortgages on the lands donated by the Federal Government for the construction of this road.

⁶⁷ These were "the terms of a proposed settlement by way of compromise, arrived at after prolonged discussion" between the Board of Commissioners "and Mr. T. W. Snagge, the standing counsel of the corporation of foreign bondholders, acting under the council of the corporation, to confer with the Governor and other Commissioners." Report of Commissioners, Senate Journal, 1875-76, p. 224.

As to the other five roads for which bonds had been endorsed—(a) Montgomery & Eufaula, (b) East Alabama & Cincinnati, (c) Selma & Gulf, (d) New Orleans & Selma, (e) Selma, Marion & Memphis—the Commissioners report “that there is litigation pending in the courts of this state and Tennessee of an important character, involving points of law that will in all probability very materially change the aspect of what is claimed as the liability of the state upon its endorsement of the bonds of those companies; and we trust may result in convincing the holders of said bonds that their true interest will be best advanced by their acceptance of a transfer of the lien of the state created by statute, and giving to the state a full discharge from these pretended claims against it.”⁶⁸

For the \$1,156,000.00 direct bonds issued in exchange for the endorsed bonds under the act of April 21, 1873, the report recommended⁶⁹ that new bonds be substituted “on the basis of fifty cents in the dollar of the principle of those outstanding, the new bond to have thirty years to run at five per cent per annum.” This plan was adopted by the Legislature. An act “to ratify and confirm the settlement of the existing indebtedness of the state, as proposed in the report of the commissioners” was passed, by which the liabilities of the state were reduced to \$1,596,000.00,⁷⁰ while it left “open for further settlement the liability of the state upon outstanding endorsements for the five other railroad companies” enumerated above.⁷¹ These latter claims were deemed by the state to be invalid and

⁶⁸ Senate Journal, 1875-6, p. 217.

⁶⁹ *Ibid.*, p. 210.

⁷⁰ \$1,000,000 in new bonds to be issued to the Alabama and Chattanooga Railroad Company, designated as “class C” plus \$596,000, the limit set as the aggregate of the bonds (designated as “class B”) to be substituted for these bonds issued under Act of April 21, 1873. Sections vi-vii and ix-x of the act approved Feb. 23, 1876.

⁷¹ Report of the Committee by which the bill was drafted. Senate Journal, 1875-76, p. 319.

were never recognized, though efforts were made for their collection.

Upon the terms of this law settlement has been made as the bonds have been presented for exchange, the process having covered a number of years.⁷² On September 30, 1897, there were outstanding of these "B" and "C" bonds \$1,544,000.00,⁷³ which now form a part of the bonded debt of Alabama. By acts approved December 14, 1874, and March 17, 1875, the Legislature repealed the acts which had authorized county and state aid to internal improvements.⁷⁴ The constitution of Alabama, which became operative December 6, 1875, forbids the state or "any county, city, town or other subdivision of the state from engaging in, or encouraging works of internal improvement either by loans of money or credit, or by becoming stockholders in such enterprises."⁷⁵ And thus ended the last chapter in the history of public aid to internal improvements in Alabama.

⁷² The Auditor's Report (p. 5) of 1893 shows that there had been issued of "class B" \$578,000, leaving \$18,000 still to be issued; and of "class C" \$963,000, leaving \$30,000 still to be issued.

⁷³ "Class B" \$578,000; "class C" \$966,000. Auditor's Report, 1897, p. 29.

⁷⁴ Acts of Alabama, 1874-75, p. 269.

⁷⁵ Constitution of Alabama, Article iv, Sections 54-55.

TRUST COMPANIES IN THE
UNITED STATES

SERIES XX

Nos. 5-6

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

(Edited 1882-1901 by H. B. Adams.)

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Editors

TRUST COMPANIES IN THE
UNITED STATES

BY GEORGE CATOR

BALTIMORE
THE JOHNS HOPKINS PRESS
PUBLISHED MONTHLY
MAY-JUNE, 1902

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The Lord Baltimore Press
THE FRIEDENWALD COMPANY
BALTIMORE, MD.

PREFACE

This paper is not intended to be an exhaustive treatise on trust companies or on any particular feature of them, but is simply a brief discourse giving a general outline of the subject. The first chapter is of a historical character; it notes, among other things, the use of the term "trust" in titles of different corporations and refers to the development of trust companies in New York, Philadelphia, Boston and Chicago. Then follows a discussion of the functions exercised by trust companies and of their regulation by the State. The concluding remarks are a summary of what precedes, along with suggestions as to some of the causes leading to the growth of these institutions and the present place occupied by them; in this part, and elsewhere, a few criticisms and speculations are ventured. The appendices comprise sketches of two of the early trust companies, schedules of legislation and tables of statistics. The main paper and the appendices are in a great measure independent, and yet are somewhat connected, for the former advances many statements based upon the authorities which are quoted in the appendices, and the latter, in turn, owe their conception to the impressions formed by the writer while collecting materials for the essay.

The author realizes that the history of the trust company movement in the various sections of the country has been too much neglected in his study, and that the deficiency will be evident even in the rough analysis which he has attempted. The chief authorities consulted in the preparation of this work have been the laws of the different states and territories, the reports of the banking de-

partments of New York, Pennsylvania and Massachusetts, of the Auditor of Illinois and of the Comptroller of the Currency of the United States, the Bankers' Magazine and the Commercial and Financial Chronicle of New York. The two journals named publish the proceedings of the annual meetings held by the Trust Company Section of the American Bankers' Association and contain many other items relating to our subject. They have supplied the principal data for the accounts given of the companies in New York and Philadelphia, the comments made upon the functions of the institution in general, and much stated throughout the essay.

I desire to thank Dr. George E. Barnett of the Johns Hopkins University, and Mr. Charles H. Porter of Baltimore, for their services. I am under obligation to the Farmers' Loan and Trust Company of New York and Mr. Albert W. Rayner of Baltimore for the sketches furnished by them. These articles, in Appendices I and II, give a short history of the two companies, each of which is often referred to as the oldest trust company in America. The story of the New York Company is told by that company, the one of the Pennsylvania Company is mostly a compilation from its published history. I want to make particular recognition of the assistance rendered by Dr. J. B. Phillips of the New York State Library at Albany, New York, who, besides aiding me in other respects, prepared for me the schedules, in Appendix III, of bank and trust company legislation.

I must also make grateful acknowledgment for their many helpful suggestions to those of my friends who were kind enough to read my manuscript.

BALTIMORE, May, 1902.

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TRUST COMPANIES IN THE UNITED STATES

INTRODUCTION

Trust companies act as trustees and execute other forms of trusts.¹ Corporations exercising such powers are not entirely unknown elsewhere;² but on account of their remarkable growth and success in the United States they have become distinctively an American institution.

Trust companies have existed in this country for more than three-quarters of a century; their great development, however, has been within very recent years. They are not noticed in such books of general reference as the 1883 edition of Appleton's Cyclopaedia or the ninth edition of the Encyclopaedia Britannica. About the time of the issue of these works, trust companies began to attract more attention, and articles upon them are found in Appleton's Annual for 1885 and in the American Supplement of the Britannica.

¹ Standard Dictionary; trust company, "a corporation whose business is to receive and execute trusts."

² Bankers' Magazine, New York, vol. 59, page 714, vol. 63, page 844. Commercial and Financial Chronicle, New York, vol. 70, No. 1802, page iii. Bankers' Magazine, London, vol. 56, page 165.

CHAPTER I

HISTORICAL

INSTITUTIONS WITH WORD TRUST IN TITLES.

For a long time there appears to have been a more or less vague meaning attached to the word "trust" in the titles of corporations. In some respects there is at present greater confusion than ever, for the great industrial combinations which now occupy public attention are generally known as trusts.³ Part of the popular prejudice existing against trust companies is due to this fact. The term in the sense of an industrial combination has a different meaning from what it has when used in connection with trust companies. A trust or combine conducts business solely on its own account, whereas a trust company, as such, manages the property of others.

A trust company is at present a distinct institution, nevertheless it must not be supposed that, because a company has the word trust in its official name, this necessarily indicates a corporation with the power to act as trustee. The term trust has long been used for titles of financial institutions⁴ and has often been adopted with no other idea than that of signifying strength and inspiring confidence. The choice has not always been a proper one. Such was the case with the North American Trust and Banking Company of New York, whose failure some fifty years ago was referred to in the London Times of that day, as one of the numerous instances in the United States where there had

³ Standard Dictionary: trust, "a combination of interests for the purpose of regulating and controlling by means of a common authority the use, supply, or disposal of some kind of property."

been gross mismanagement in financial matters.⁴ The company had given its notes, bearing interest and secured by collateral, for a loan negotiated in England; and after it had failed, long litigation ensued for the possession of the collateral securities. The court at first held that the trust was void, and that the securities must be surrendered to the receiver; as a bank could only issue notes which were payable on demand and bore no interest.⁵ This decision was finally reversed, and the English creditors were afforded protection.⁶ It is interesting to note that there has been litigation in recent years on account of trust companies receiving deposits subject to check.⁷

As another example, we may refer to the Ohio Life Insurance and Trust Company, whose suspension in 1857 precipitated the panic of that year.⁸ There are many illustrations in the past, as at present, that the titles of banks are often misleading, and that their names have at times been selected for the purpose of deception. In the list is the Wisconsin Fire and Marine Insurance Company,⁹ of Milwaukee, a corporation that operated largely as a bank of issue in Chicago before the Civil War, and continued as an important financial institution in the West until it failed during the panic of 1893. The famous Manhattan Company¹⁰ was formed in 1799 ostensibly as a company to supply the city of New York with water, and now under the perpetual charter that was granted a century ago does a large banking business.

⁴ Bankers' Magazine, New York, 1847, vol. 1, page 524.

⁵ Bankers' Magazine, New York, 1847, vol. 1, page 227; 1849, vol. 4, page 596; 1852, vol. 7, page 340.

⁶ Bankers' Magazine, New York, 1857, vol. 12, page 141; 1858, vol. 13, page 202.

⁷ Note 110.
⁸ History of Banking, Knox, 1900, p. 684. Bankers' Magazine, New York, vol. 13, p. 567; vol. 15, p. 313.

⁹ Rhodes Journal of Banking, vol. 20, pp. 810, 886. Money and Banking, Horace White, 1896, p. 387. History of Banking, Knox, 1900, p. 740.

¹⁰ Bankers' Magazine, New York, vol. 3, pp. 137, 678. Report of New York Superintendent of Banking, Dec. 27, 1899, p. 134.

It is not surprising that, with this freedom in the choice of names for banks, trust, a term of attractive significance, has been employed. A company with such a title readily suggests to the mind a safe depository for trust funds. The Attorney-General of New York in 1850, in a written opinion, spoke of savings banks as trust associations acting under corporate powers for the security of deposits.¹¹ In the *Encyclopædia Britannica*¹² a trust association is described as an institution which borrows money on debentures and invests the proceeds in loans of foreign states or similar securities. A high rate of interest is promised the investor, on the principle that the numerous investments of the association are on the average safe and yield a good income. As stated, the regular trust companies are not noticed in the *Britannica*.

When the early corporations were formed with powers to act as trustees, the feature was not considered of sufficient importance to constitute an independent business of itself or to establish a peculiar institution. The first charters, allowing the trust privilege, were given to insurance companies;¹³ and for a long time the trust and insurance businesses were carried on together. Even when they began to be conducted separately, they were popularly regarded as the same class of operations; and this was particularly the case as to life insurance.

The United States Trust Company of New York was chartered in 1853; and, although it did not underwrite insurance risks, it was regarded at the time much the same as a life insurance company. The *Bankers' Magazine*¹⁴ of 1856 calls the latter institution a trust company. It is an important trust, the magazine says, for it holds the savings of thousands of people to whom it has issued

¹¹ *Bankers' Magazine*, New York, vol. 4, p. 954.

¹² *Encyclopædia Britannica*, Article "Banking," vol. 3, page 328.

¹³ *Farmers' Fire Ins. and Ln. Co.*, note 21. *N. Y. Life Ins. and Trust Co.*, note 22.

¹⁴ *Bankers' Magazine*, New York, vol. 9, p. 324.

policies, and so assumes contracts which will in the end involve the payment of millions of dollars of trust funds.

At present a trust company is something more definite. With the growing importance of corporate bodies, the trust company has its part to perform. It is a corporation that receives and executes different forms of trusts; although, with many companies bearing the title, the word has not this significance.

In some states where no regulation exists to prevent, small concerns formed for advancing loans on furniture while in use, on salaries, and on such classes of security, select high-sounding names for their titles, and "trust," "guaranty," "loan," and the like, serve their turn with them. In New York¹⁵ there existed for some years a restriction which prevented, except under the Banking or the Insurance Law, the formation of corporations with certain terms in their titles; until 1900, trust was not included in the list.¹⁶ The omission was taken advantage of in the meantime, and, although under the Banking Act a trust company could not be organized in the Empire City with a capital of less than a half million dollars, under the Stock Corporation Law a company, having the word trust in its name, was formed to do an agency business with a capital of one thousand dollars.

TRUST COMPANIES IN NEW YORK.¹⁷

The claim has been made that the first trust company in the United States was the Pennsylvania Company for Insurances on Lives and Granting Annuities, a corporation started in Philadelphia and still located there.¹⁸ This company was chartered in 1812,¹⁹ but did not receive definite

¹⁵ Report of New York Superintendent of Banking, Dec. 27, 1899, p. xxix.

¹⁶ New York Corporation Law, 1900, Sec. 6. Schedule xviii.

¹⁷ Bankers' Magazine, New York, vol. 59, p. 718.

¹⁸ Report of Pennsylvania Bank Commissioners, Part I, 1901, p. 655. Appendix II.

¹⁹ Laws of Pennsylvania, March 10, 1812, Chap. 64.

powers from the legislature to act as trustee until 1836;²⁰ whereas the privilege was granted in New York to one company in 1822, and to another in 1830.

The Farmers' Loan and Trust Company, of New York, was incorporated in February, 1822, under the title of the Farmers' Fire Insurance and Loan Company, and later in the same year was empowered to execute all lawful trusts.²¹ This appears to have been the first corporation in the United States to act as trustee. Another company in the state to be granted the power was the New York Life Insurance and Trust Company,²² which was chartered with the right in 1830, and consequently antedated the Pennsylvania Company in this respect. The United States Trust Company²³ was chartered in 1853, and the Union Trust Company²⁴ in 1864. These four corporations are still in existence and among the great companies of the metropolis.²⁵

For a number of years there continued to be very few trust companies in New York; and in 1874, when they had become more prominent and were first brought by a general law under the supervision of the Banking Department of the state,²⁶ only eleven²⁷ of them were in that city. Ten or twelve years after this,²⁸ the period set in that marked their growth, and in 1901 there were in New York and Brooklyn forty companies with combined capital, surplus and undivided profits of about one hundred and forty million dollars and resources of over nine hundred

²⁰ Laws of Pennsylvania, Feb. 26, 1836, Act 25.

²¹ Laws of New York, Feb. 28, April 17, 1822, Chap's 50, 240.

Appendix I.

²² Laws of New York, March 9, 1830, Chap. 75.

²³ Laws of New York, April 12, 1853, Chap. 204. Note 14.

²⁴ Laws of New York, April 23, 1864, Chap. 316. Note 146.

²⁵ Report of New York Superintendent of Banking, July 1, 1901.

²⁶ Bankers' Magazine, New York, vol. 61, p. 787. Schedules VII and VIII.

²⁷ Commercial and Financial Chronicle, New York, Jan. 10, 1885; vol. 40, No. 1020, p. 42. Table I (N. Y. State).

²⁸ Bankers' Magazine, New York, vol. 43, p. 659; vol. 45, p. 852.

million dollars, exclusive of the enormous amount comprised in the trust estates under their control.²⁹

Prior to 1887 trust companies were created by special charters.³⁰ In this year the Trust Companies Act was passed providing a general law for their formation. Within five years thirteen new companies were incorporated under this law and one company with an old charter commenced business.

Subsequent amendments to the laws of the state have placed the trust companies on an equal footing with the banks in regard to loans and discounts.³¹ By the act of 1901 the rates of taxation are fixed about the same for both institutions.³²

The first corporations³³ that acted as trustees were not permitted to engage in banking, or, if allowed to accept deposits, were apparently given the power only for trust purposes. The trust companies of the present day make banking a main feature, and are not restricted as the banks are, in regard to investments or reserves for deposits.³⁴

TRUST COMPANIES IN PHILADELPHIA.³⁵

The first two trust companies in Philadelphia were the Pennsylvania Company,³⁶ already alluded to, and the Girard Life³⁷ Insurance, Annuity and Trust Company, chartered

²⁹ Companies in New York and Brooklyn; Report of New York Superintendent of Banking, July 1, 1901.

³⁰ Laws of New York, June 8, 1887, Chap. 546; Bankers' Magazine, New York, vol. 59, p. 718. Schedule V.

³¹ Laws of New York, May 18, 1892, Chap. 687, §19. Banking Law of New York, Art. IV, Sec. 156, 2. Bankers' Magazine, New York, vol. 59, p. 719. Schedules II and XIII.

³² Bankers' Magazine, New York, vol. 62, p. 741. Schedule XVII.

³³ Notes 19 to 23.

³⁴ Banking Law of New York, Art. II, Sec. 43 and 44. Political Science Quarterly, June, 1901, p. 250, article "Trust Companies," by A. D. Noyes. Schedules XII and XIV. See pages 43, 44.

³⁵ Bankers' Magazine, New York, vol. 59, p. 713.

³⁶ Notes 19 and 20.

³⁷ Laws of Pennsylvania, March 17, 1836, Act 41.

in 1836. Both corporations were empowered in the last named year to receive real and personal property in trust, but were forbidden to exercise banking privileges. After the Pennsylvania Company had been granted the right to execute trusts, the Girard Company was chartered with the same powers. In 1853 the former³⁸ was authorized to act as administrator and executor, and in 1855 the latter³⁹ was allowed to do so. By the law of 1856⁴⁰ foreign trust companies could, under certain conditions, be represented in the state, but none took advantage of the privilege; and as no other domestic companies entered the field until 1865, the two original companies remained without competitors up to that time. In the eight years following about thirty-seven new charters were granted; very few of them, however, were used. It was at this period that the life insurance and trust businesses began to be carried on separately. In 1866 the Fidelity Insurance, Trust and Safe Deposit Company⁴¹ was incorporated. It was the first company in Pennsylvania that had the power to underwrite fidelity insurance. This business "has since constituted an important branch in most Pennsylvanian companies." In some states⁴² the two classes of operations are not combined.

The constitution of Pennsylvania of 1873⁴³ required that all future corporations should be formed under general laws, and this provision led to the passage of the General Corporation Act of 1874.⁴⁴ No reference was made in that act to trust companies, an omission which has been held to be due to a lack of interest in the matter and not to any hostility to such companies. This apparent oversight prevented the formation of new companies until 1881, when

³⁸ Laws of Pennsylvania, March 26, 1853, Act. 164.

³⁹ Laws of Pennsylvania, Feb. 15, 1855, Act 40.

⁴⁰ Laws of Pennsylvania, April 9, 1856, Act 300, Sec. 1.

⁴¹ Laws of Pennsylvania, March 22, 1866, Act 257.

⁴² Schedule I.

⁴³ Constitution of Pennsylvania, Art. III, Sec. 7.

⁴⁴ Laws of Pennsylvania, April 29, 1874, Act 32, Sec. 2

the law was amended to correct the defect. In 1881 there were eight trust companies in the Quaker City. In 1901⁴⁵ there were forty-four companies with combined capital, surplus and undivided profits of about seventy million dollars.

By the amendment of 1881 to the Corporation Act the title insurance companies were given trust, surety and safe deposit powers, and were permitted to receive on deposit and in trust both real and personal property.⁴⁶ The law of 1881 forbids trust companies doing a banking business,^{48a} and requires them to keep trust funds separate from their own assets.⁴⁷

Trust companies in Philadelphia receive demand deposits, but it has been until recently a mooted question, whether they have had the legal right to do so. The Bankers' Magazine,⁴⁸ in 1898, called attention to the fact that under the provisions of the constitution of Pennsylvania no corporation with banking and discount privileges could be organized without three months' public notice at the place of intended location.⁴⁹ The legislature, this authority remarked, could not dispense with a constitutional requirement, and on general principles it was to be supposed that the trust companies had not given the necessary notice. No decision construing the term "banking," as used in the constitution, had come under observation; but the opinion was expressed that it would be held to mean, among other things, receiving, like the banks, deposits subject to check. The law of 1885 gave additional powers to trust companies; necessarily this particular privilege, the article

⁴⁵ Report of Commissioner of Banking of Pennsylvania, 1901, Part I.

⁴⁶ Laws of Pennsylvania, May 24, 1881, Act 26, Sec. 1. Schedules I and V.

^{48a} Laws of Pennsylvania, May 24, 1881, Act 26, Sec. 1.

⁴⁷ Laws of Pennsylvania, May 24, 1881, Act 26, Sec. 5. Bankers' Magazine, New York, vol. 59, p. 717. Note 29.

⁴⁸ Bankers' Magazine, New York, 1898, vol. 56, p. 100.

⁴⁹ Constitution of Pennsylvania, Art. 16, Sec. 11.

said, would not be implied if in violation of the constitution. Under a decision, rendered by a federal court in 1900, trust companies in Pennsylvania may legally receive demand deposits.⁵⁰ Such being the case, these companies have full banking powers,⁵¹ except those of discounting paper and of issuing bank notes.

TRUST COMPANIES IN BOSTON.

The first trust company in Massachusetts was the New England Trust Company, chartered in April, 1869, by a special act of the legislature.⁵² It was empowered to execute trusts, to receive money on deposit and to make loans on real estate and other securities. The following companies were later granted similar privileges by the legislature; the Northampton Loan and Trust Company⁵³ in 1870, (this became in 1875 the Massachusetts Loan and Trust Company, of Boston),⁵⁴ and the Boston Safe Deposit and Trust Company in 1874.⁵⁵ These companies were required by their charters to make reports to and be examined by the Commissioners of Savings Banks. In 1874 the Commissioners stated in their report that the companies named did an ordinary banking business, except the Northampton, which did not receive deposits.⁵⁶

A general law was passed in 1888 providing for the incorporation and regulation of trust companies. Under this act, corporations may be formed with powers like those of the earlier trust companies; they may invest in the same

⁵⁰ 105 Federal Reporter (U. S.), 491. (Case of Bank of Saginaw vs. Title and Trust Co., U. S. Circuit Court of Penna., Dec. 26, 1900); Bankers' Magazine, New York, vol. 62, p. 561.

⁵¹ Schedule II.

⁵² Laws of Massachusetts, 1869, Chapter 182.

⁵³ Laws of Massachusetts, 1870, Chapter 323.

⁵⁴ Laws of Massachusetts, 1875, Chapter 16.

⁵⁵ Laws of Massachusetts, 1867, Chapter 151; 1874, Chapter 373.

⁵⁶ Report of Massachusetts Commissioners of Savings Banks, 1874, p. 176.

securities as the savings banks—the only state banks in Massachusetts—and may loan money on collateral. Trust companies are under the supervision of the commissioners of savings banks.⁵⁷

In 1898 there were thirty-four companies in the state authorized to execute trust powers, but only eleven had trust departments.⁵⁸ In 1901⁵⁹ there were in the state thirty-six companies of the former and fifteen of the latter class, and in the city of Boston the figures were respectively seventeen and eight.

TRUST COMPANIES IN CHICAGO.

Many banks were incorporated by the legislature of Illinois between 1855 and 1870 with the word trust in their titles. Although these institutions were generally empowered to "accept and execute trusts," banking was the main feature of their charters.

The Merchants' Loan and Trust Company, chartered in 1857, was one of the earliest companies of importance in the state to act as trustee.⁶⁰ As was the case with other companies of this class, it was authorized to engage in banking, except the issue of notes. Among the early corporations exercising similar banking and trust powers were the Chicago Loan and Trust Company,⁶¹ chartered in 1857, and the Real Estate Loan and Trust Company,⁶² in 1861; both are out of existence.⁶³

The constitution of 1870⁶⁴ required the incorporation of banks and trust companies under a general law. No action

⁵⁷ Laws of Massachusetts, 1888, Chap. 413. Schedules VII and VIII.

⁵⁸ History of Banking, Knox, p. 370.

⁵⁹ Report Massachusetts Commissioners of Savings Banks, 1901.

⁶⁰ Private Laws of Illinois, 1857, p. 82.

⁶¹ Private Laws of Illinois, 1859, p. 401.

⁶² Private Laws of Illinois, 1861, p. 462.

⁶³ Not in Report of Auditor of Illinois, Dec. 11, 1901.

⁶⁴ Illinois Constitution, Art. XI, Sec. 5, 6, 7, 8.

was taken in regard to trust companies until 1887, when banking laws were passed under which banks and other authorized companies were granted trust powers upon the proper deposit of securities with the auditor of the state.⁶⁵ In Illinois the trust companies, as such, do not have banking powers, but banks may qualify under the trust act, thus combining the powers of a bank and trust company.

In 1901 eighteen home banks and companies and six foreign companies were qualified to execute trusts in the state. In the same year there were two Chicago trust companies operating under the General Corporation Law and six under the Banking Law; the latter class had capital, surplus and undivided profits amounting to about \$18,000,000.⁶⁶

⁶⁵ Illinois Revised Statutes, 1901, Chap. 32, §§129-147.

⁶⁶ Report of Auditor of Illinois, Dec. 11, 1901.

CHAPTER II

FUNCTIONS OF TRUST COMPANIES⁶⁷

Trust companies exercise, among other powers, those of trustee, executor, administrator, guardian, committee, receiver, assignee, transfer agent, registrar, investment agent, fiscal agent, promoter, underwriter, &c. They do also a guarantee, safe deposit and general banking business.

(a) TRUSTEE UNDER A WILL, EXECUTOR, ETC.⁶⁸

In former times, when a man was about to make a will disposing of his property after death, he would recall to mind his acquaintances, and from their number would make a choice of one or more, best qualified in his opinion to settle his estate, or to act as trustee or guardian for certain wards. On account of unwise selections, the beneficiaries under wills frequently suffered loss.

It is said that this difficulty has been overcome by having corporations with large capital to act in such capacities; and, without doubt, much good has been accomplished by these institutions. A great trust company has a capital and surplus which are imposing. With the large volume of business under its charge it can establish special and well organized departments, by means of which trust estates may be intelligently managed and complete records in regard to them kept. A bonding company, however,

⁶⁷ Commercial and Financial Chronicle, New York, Bankers' and Trust Supplement, Sept. 3, 1898; Articles of Trust Co. Section.

⁶⁸ Commercial and Financial Chronicle, New York, Bankers' and Trust Supplement, Sept. 3, 1898, pp. 63, 71. Bankers' Magazine, New York, vol. 57, pp. 528, 536, 545.

may now guarantee the financial responsibility of an individual, and, at times, it is proper to select an individual rather than a corporation as executor or trustee.

(I) TRUSTEES FOR REAL ESTATE.

Differences of opinion exist as to whether an individual as the trustee, or a trust company, manages real estate better. The impression prevails with some that an individual generally gives more attention to small details, and makes closer investigations when tenants desire changes or repairs made to property. The result is, it is contended, that frequently he either refuses altogether the request for an improvement on a house, or makes a less expenditure answer; whereas, under similar circumstances, a trust company grants all that is asked.

On the other hand, the claim is made that the agent of a corporation is not likely to consent to extravagant outlays. The reason advanced is that this person must submit his work to the supervision of higher officials who are removed from the influence of sentiment and regard all transactions from a business point of view. It is further held that the individual as trustee, having the sole authority to render a final decision, is more subject to be swayed in an unguarded moment by the personal appeal of an applicant to whom he is easily accessible.

It may be that the individual as trustee makes greater effort than a trust company to reduce expenditures, nevertheless a more liberal policy may, as a rule, be wiser. Liberality may tend to keep tenants, while the opposite course may drive them away. When an old tenant leaves, usually the property must be improved to secure a new one, and possibly at greater expense than may have been necessary to have kept it occupied; besides, there is to be considered the loss of rent, while the premises have been idle.

The question resolves itself at last in this, as in other business matters, into one of honest and intelligent man-

agement of each particular case. It is, however, a belief of some whose opinion should have weight, that better results are generally obtained from this class of property under the care of individuals than under that of corporations.

(2) TRUSTEE FOR PERSONAL PROPERTY.

Some contend that a trust company as trustee may dispose of the houses and lands at a sacrifice in order to distribute the proceeds of an estate without delay, or to make investments in personal property, because the latter can be handled with less trouble and at greater profit.

A trust company is in a favorable position to decide intelligently about the various securities on the market. It should unquestionably be better informed in this respect than is ordinarily a private individual, most of whose time is occupied with matters of an entirely different character. The point is made that a company may use its office as trustee to unload securities in which it is interested. The weakness of human nature may be counted upon, and perhaps the judgment of officials is at times influenced in an undue manner to turn over to an estate securities with which their company has been connected in floating. The dividends of a trust company are often largely increased by the liberal commissions which it receives for underwriting various schemes; and it is advantageous to have a place to dispose of the investments acquired. Injury may be done to an estate in this way; but such is not necessarily the case, for transactions of this kind may occur without loss to the beneficiaries of a trust.

A claim made in favor of the companies as executors, trustees, guardians, etc., is that their great wealth and prominence put them in position to command ample funds for the protection or development of interests committed to their care. Individuals in these capacities have often acted liberally, and, on account of friendship, have made large advances and assumed personal risks. An individual,

as guardian of minors or of incompetent persons, may, for special reasons, feel a deeper concern in his ward than will the officials of a corporation.

An individual may be better able than a corporation to evade the payment of taxes upon an estate.⁶⁹ This fact, at times, has its influence in the selection of an executor or trustee.

As seen in the brief survey, advantages rest in certain instances with an individual in these fiduciary relations. Nevertheless, if one will weigh the uncertainties as to capacity, responsibility, integrity and duration of life, it will often be decided that better results may be expected from a large and conservatively managed trust company than from an individual, especially in cases covering long periods of time.

(b) ASSIGNEE AND RECEIVER.⁷⁰

Much that has been said in this discussion relative to executors and trustees under wills applies to assignees and receivers. In the receivership of railroads the choice has usually fallen upon individuals. Many of the great railroad systems of the country have in late years gone into the hands of receivers; and although trust companies have been prominent during this period, individuals have generally, if not always, been appointed by the court to take charge of affairs. Under the present arrangements, by coöoperating with the receivers, trust companies and other banking concerns have reaped great benefits, and in reorganizations of bankrupt railroads they have found a lucrative business.

⁶⁹ Laws of Maryland, 1890, Chap. 544, p. 658. (Trust companies are required to report to the Tax Commissioner the trust funds in their care, so that these funds may be assessed for taxes.)

⁷⁰ Commercial and Financial Chronicle, New York; Bankers' and Trust Supplement, Sept. 3, 1898, p. 68. Bankers' Magazine, New York, vol. 57, p. 533.

(c) TRUSTEE UNDER MORTGAGE DEED.⁷¹

Trust companies have almost entirely absorbed the business of acting as trustees under the mortgage deeds of railroad and industrial corporations. This is an improvement over the old practice of having individuals serve in this capacity.

Bonds are frequently issued for long terms, and trustees without a corporate existence would probably not live to the expiration of the trust. A company has generally a greater prominence than an individual, and its legal residence may be more easily determined. The bonds of railroads and other corporations have often a market of more than national extent, and it is important as regards the sale of the securities, as well as the protection of the eventual holders, to select proper trustees. But a trustee, as such, does not act as a guarantor of the bonds in case of default.

In certifying to an issue of bonds, the trust company that acts as trustee affixes to each bond a trustee's certificate. The form of such certificate may be:

TRUSTEE'S CERTIFICATE

(1) This bond is one of the series of bonds described in the mortgage or deed of trust within mentioned.

(name of trust company)

Trustee.

Or the body of the form may be somewhat as follows:

(2) It is hereby certified that this bond is one of a series _____ bonds of _____ dollars each, secured by the within mentioned mortgage or deed of trust.

(3) (Name of trust company) as trustee hereby certifies that this bond is one of a series of _____ bonds mentioned and described in and secured by the mortgage within referred to.

⁷¹ Bankers' Magazine, New York, vol. 61, p. 780.

(4) (Name of trust company) hereby certifies that this bond is one of a series of bonds described in the mortgage or deed of trust within mentioned, and has been certified by this company in accord with the terms of said deed of trust.

(5) This bond is one of a series_____bonds of_____
Company issued under the mortgage executed by said
company to the undersigned as trustee, dated and referred
to in such bond.

Some trust companies have a word like "guarantee" in their titles.⁷² When this is the case, the trustee's certificate may be specially misleading as an indication that it is a guarantee of the payment of the bond.

A trustee may limit very narrowly his liability by a statement of the fact in the deed of trust. It is the business of a trust company to protect itself when serving in this capacity. Nevertheless, as a particular trustee may be chosen to give standing to a security, the limitations of the liability should be so stated that the terms may be easily observed and understood by an ordinary purchaser. There should be used no equivocal or misleading expressions. As regards a certain class of bonds, it may not be right to obligate the trustee to attend to the recording of the deed. But, if a trust company assumes the office of trustee under a mortgage deed of a railroad or industrial corporation, it seems proper to make it the legal duty of the trustee to see that the deed has been recorded in due form, and that the recitals contained in the same are substantially correct. Where securities change ownership simply by delivery of hand and are extensively dealt in, as is the case with these bonds, each indorsement that is made upon them by a responsible company to promote their sale should carry with it the proper legal liability. There should be no escape

⁷² Guaranty Trust Co. of New York; Baltimore Trust and Guaranty Co.

through the employment of indefinite terms, or of expressions, clear in themselves but easily overlooked or misunderstood on account of the manner of presentation.

(d) TRUSTEE UNDER PRIVATE AGREEMENT.⁷³

Trust companies act as trustees under private agreements, and almost their entire trust business, except that which is done under the order of the court, is of this character. Their powers in these numerous instances necessarily vary with the conditions of the trust. Whether an individual or a corporation may be the proper choice will especially depend upon the circumstances attending each particular case.

Where large corporate and individual interests have been concerned, trust companies, in recent years, have occupied a conspicuous place as trustees. In the reorganizations that have resulted from railroad and industrial combinations and in the promotion of new industries, these companies have become the depositories of bonds, titles and equities of corporations, firms and individuals. Although they have not been absolutely necessary for the development of the enterprises with which they have been connected, they have been important factors.

Trust companies act under private agreement as transfer agents and registrars of corporations; and this feature will be discussed next under a separate head.

(e) TRANSFER AGENT AND REGISTRAR.⁷⁴

The duties and responsibilities of transfer agents and registrars are similar. A transfer agent transfers the

⁷³ Commercial and Financial Chronicle, New York, Bankers' and Trust Supplement, Sept. 3, 1898, p. 70. Bankers' Magazine, New York, vol. 57, p. 525.

⁷⁴ Commercial and Financial Chronicle, New York, Bankers' and Trust Supplement, Sept. 3, 1898, p. 58. Bankers' Magazine, New York, vol. 57, p. 514; vol. 61, p. 756.

stock of a corporation; that is, upon request, it passes upon the evidence of the transfer of title, and when such evidence is considered satisfactory, issues a new certificate. A registrar keeps a register or record of all the stock issued. A corporation may employ both agencies, the registrar acting as a check upon the transfer agent.

The practice of having transfer agents, though older than that as to registrars, appears to be modern. The growth is one incident to business requirements. It may not always be convenient for a company to have the delegated officers at hand to transfer the stock. It may be desirable to have a transfer office in a different place from the main office, or to have more than one transfer office.

The custom of employing a registrar is due, according to one authority, to the fact that in New York, some years ago, a transfer agent of a railroad company, who was also its president, was guilty of an over-issue of the stock of the company.⁷⁵ Disclosures made in the investigation of this affair and irregularities of a similar character in other corporations finally had effect. In 1869 the New York Stock Exchange passed a rule requiring all stocks dealt in upon that exchange to be properly certified to by a responsible registrar.

The appointment to such positions may be made simply by a resolution of the directors of the corporation for whom these agents act. In the absence of expressed agreements, uncertainty exists about the measure of legal responsibility assumed in these transactions, except in regard to loss arising from glaring neglect of duties. An attorney, connected with a trust company, has expressed the following view: if one of these agents, desiring to protect himself, asks his principal for instruction how to act and the principal refuses to give any orders, on the ground that

⁷⁵ Commercial and Financial Chronicle, New York, Bankers' and Trust Supplement, Sept. 3, 1898, p. 61 (New York & New Haven R. R. Co.).

the agent in accepting the office is supposed to have known its duties, it will be difficult to assail the position.⁷⁶

The investing public is deeply concerned in the work of these agencies. A certificate of stock, for instance, is issued; upon it is the indorsement of a well-known bank or trust company that the certificate is genuine and is what it is represented to be on its face. Afterwards there proves to be some irregularity in the issue. In such a case the innocent holder will, no doubt, feel that he has a just claim against the party making this authentication; that the claim should be enforceable by law, and should not be debarred by a plea set up that the agent has used care in executing the duties of his office, but has himself been deceived. The statement is made that certain brokers of prominence have been under the impression that a security has been guaranteed to some extent by the indorsement of a registrar, and that the use of this agency has represented "many things beside the fact that the certificate" has been "within the stated issue."^{76a}

Specimens of the forms used on certificates of stock by trust companies or other corporations acting as registrars or transfer agents are as follows:

(1) Countersigned and registered

this—day of—190

(name of Trust Company) Registrar.

by—

(officer).

(2) Registered this—day of—190

(name of Trust Company) Registrar, or Transfer Agent.

by—

(officer).

⁷⁶ Bankers' Magazine, N. Y., vol. 61, p. 762.

^{76a} Commercial and Financial Chronicle, New York, Bankers' and Trust Supplement, Sept. 3, 1898, p. 62.

(3) Countersigned and transferred this—day of—190
 (name of Trust Company) Transfer Agent.
 by _____
 (officer).

(4) Countersigned this—day of—190
 (name of Trust Company) Transfer Agent.
 by _____
 (officer).

Some certificates have a paragraph in them which reads: "this certificate is valid only when countersigned by (name of Trust Company) registrar or transfer agent."

Where bonds may be registered, the fact is generally stated and the following form is always used:

Date of Register.	In whose name registered.	Transfer Agent

Bonds are usually registered as to principal only, but in some cases a corporation will, on surrender of a bond and coupons, issue a registered security, covering the principal and interest.

If the trust companies which act in these capacities desire to disclaim all liability for their certification, the question naturally suggests itself, why are not the indorsements made in such a way as to signify this without any room for doubt? The reason assigned for the omission is that the public have become accustomed to the present form, and that a different character of certificate if introduced may possibly be viewed with suspicion. A change that may injure the market for securities is not likely to be adopted, especially when there is strong competition among trust companies to obtain the business. As the present form of certification may indicate to an ordinary buyer a certain guarantee, this fact, it seems, if a case arises for judicial determination, ought to have great weight in fixing the legal liabilities of the parties who use it.

The matter is complicated, as the transfer agents and registrars may be residents of different states from the companies which they represent; and these states may have more or less conflicting laws. It is recognized by their counsel that trust companies in performing these functions, as they frequently do, may incur great liabilities, and that the small charges made for the services are by no means commensurate with the risks assumed.

CHAPTER III

AUXILIARIES TO TRUST BUSINESS

(a) FIDELITY INSURANCE.⁷⁷

Trust companies conveniently carry on, as auxiliaries to their regular business, other branches—such as one for fidelity insurance—which may prove profitable. An individual under bond is, at times, preferred as a trustee or executor to a corporation. A trust company which can bond the individual for the office may often not only extend its transactions into a new field, but also retain old business that will be otherwise lost to it.

Fidelity insurance is guaranteeing the honesty or financial ability of parties. It is a kind of business which, in the opinion of many, a trust company should not conduct, and in some places is not permitted to do so.⁷⁸ A company was started in London,⁷⁹ fifty years or more ago, especially to furnish surety bonds. Experience in the past seems to have demonstrated the advantage of different concerns acting as trustees from those underwriting fire and life insurance; and the indications now appear to be that the trust and fidelity businesses will be mostly developed apart.

There are at present only a few large American fidelity—or as they are also called surety, guarantee or bonding—companies.⁸⁰ Some of these perform all the functions⁸¹ of

⁷⁷ Schedule I.

⁷⁸ Schedule I. Note 46.

⁷⁹ Bankers' Magazine, New York, vol. 4, p. 249 (Guarantee Society).

⁸⁰ Handy Chart, published by Spectator Co., New York, 1902. The Spectator, New York, vol. 67, No. 15, p. 177. Baltimore Sun, May 28, 1901.

⁸¹ Fidelity and Deposit Co., Baltimore, Laws of Maryland, 1890, Chap. 263, p. 282.

trust companies, except executing certain forms of trusts, and some have the word trust in their titles.⁸² As bonding companies compete in many ways with trust companies and a number of trust companies act as bondsmen, there is no wonder that the public mind confuses the two institutions.⁸³

(b) **TITLE INSURANCE.**⁸⁴

It has already been noted that trust companies are formed in Pennsylvania under a general law allowing title insurance companies to exercise trust powers. In some states⁸⁵ the two features are not combined, and distinctive title insurance companies exist; these latter confine themselves to the title business, or make it their main one in case they carry on banking and other operations.

Title insurance requires a special plant for the work. Either a trust or a bonding company can acquire this plant, and each is in a favorable position to conduct a title insurance department. The former may examine or guarantee titles for the estates under its charge, or offer its services to its numerous patrons who constantly consult it about such matters. The latter is in close association with attorneys to whom it furnishes bonds, and through this means may coöperate further with them. The business appears to be well suited to both institutions; but many contend, and with force, that a trust company should not engage in an insurance business.

⁸² American Bonding and Trust Co., Baltimore (American Bonding Co. by law of 1902), Laws of Maryland, 1894, Chap. 252, p. 335. Corporations in Maryland, acting as trustees without usual bond, cannot incur liability of surety: Laws of Maryland, 1892, Chap. 279, p. 391. Schedule I.

⁸³ In Philadelphia the trust companies do surety business. Note 46. Schedule I.

⁸⁴ Schedule I.

⁸⁵ Schedule I.

(c) **SAFE DEPOSIT.**⁸⁶

Although safe deposit companies are said to be an ancient institution, it has only been within recent years that they have become of importance. Much, at present, called wealth is in the form of evidences of debt, paper securities, a large amount of which changes ownership by delivery of hand. The great growth of this class of property, which may be easily lost or destroyed, has created a demand for specially guarded vaults for its safekeeping. Before the existence of modern safe deposit companies the vaults of regular banks were to an extent employed for the storage of valuables, and perhaps generally without cost. Some banking concerns still offer these accommodations, free of expense, to their patrons, but, in the main, safe deposit companies now perform this service and charge for the same according to the space occupied or the value of the property stored.

To prevent improper visitations, one of the earlier of the modern companies established a code of pass-words and other formalities.⁸⁷ This rigid system is no longer, as a rule, if at all, in operation, and it now requires little difficulty on the part of any respectable person to rent a box in such an institution and gain entrance into its vaults. Private watchmen and detectives may be employed to guard the buildings of safe deposit companies, and a system of mechanical enunciators may be used. But, aside from these arrangements, the only additional precautions of the kind that are taken—and they appear in their results to be all that are necessary—are to station, during business hours, special guards at the doorways and in the interior of the vaults. The doorkeepers are on duty to note the exit and entrance of visitors and to stop those not entitled to pass. The inside keepers are to observe that the indi-

⁸⁶ Bankers' Magazine, New York, vol. 21, p. 316; vol. 26, p. 632; vol. 61, p. 769. Schedule I.

⁸⁷ Bankers' Magazine, New York, vol. 26, p. 163.

viduals who enter the vaults get into their own safe deposit boxes and into no other.

The safe deposit business, though at times conducted as a separate and distinct one,⁸⁸ may be and is satisfactorily carried on by trust companies. Those who use the safe deposit vaults of a trust company get into the habit of visiting its office, and, when in want of information about an investment, a trusteeship, or some other matter, are likely to consult one of its officials. A trust company has often a large number of estates under its charge, and is compelled to supply a safe place of deposit for the securities belonging to these various trusts. In furnishing places of this order to the public it advertises itself and gains a revenue at little extra expense.

A person may enter the safe deposit vaults of a trust company, open his box, clip off his coupons and deposit them afterwards with the banking department for collection. He may buy securities from the trust company, when he desires to make investments; he may employ it virtually as a broker, solicitor and policeman, and may secure through it protection from outside attacks and from the mistakes of inexperience.⁸⁹ He may during his life transact his whole financial business through this one office, and after his death the same institution may take complete charge of his affairs.

(d) FISCAL AGENCY.

Trust companies keep in close touch with varied interests of the country. They act as fiscal agents of states, counties, municipalities, and railroad and industrial corporations. They become large depositories of funds and negotiate extensive loans. The securities which they obtain they may offer to clients or turn over to estates under their charge. But the estates receiving the securities are

⁸⁸ Table II. Schedule I.

⁸⁹ Bankers' Magazine, New York, vol. 58, p. 506.

not always properly protected.⁹⁰ Brokers also distribute investments acquired by trust companies and, on account of their influence, are often directors of these companies.

(e) SAVINGS BANK.

Trust companies enter into competition with other financial institutions of the country. They take an active part in promoting railroad and industrial enterprises and engage largely in the general banking business. They receive small sums of money at interest, and have in some places diverted deposits from the savings banks. The latter have a strong hold upon the public confidence, but they may later feel, to a greater extent, the effects of the changes which have taken place in financial conditions.

Formerly savings banks invested particularly in real estate mortgages. They put, at present, much of their funds in government, municipal, railroad, street railway and like securities. Investments of this kind are widely advertised by trust companies and other dealers, and, no doubt, many who once deposited in savings banks no longer do so, but buy stocks and bonds. Savings banks work on a narrow margin and may soon be forced to reduce their dividends. Even if trust companies, as has been insisted,⁹¹ are subjected for this class of deposits to the requirements made of the savings banks in some states, they may still afford to pay a higher rate of interest than their competitors, for the expense of operating a savings department, as a branch of a large banking business, is relatively small.

Many of the savings banks are conducted on the mutual basis, their resources being supplied entirely by their deposits and accumulated earnings. By the side of this, the capital and surplus, and the additional liability⁹² of stock-

⁹⁰ Page 23.

⁹¹ Bankers' Magazine, New York, vol. 46, pp. 695, 931. Rhodes Journal of Banking, vol. 18, p. 167; vol. 20, p. 1190.

⁹² Schedule XI.

holders of the great trust companies, make an impressive showing. The large savings banks, with enormous deposit lines⁹³ and volume of business, can keep down the expenses of operation to a small percentage; having this advantage and prestige, they may long be able to maintain their leading position. On the other hand, it is different with the smaller mutual savings associations. These have a struggle for existence; and, although many new ones are continually springing up—as it is easy to start a bank of this character—their future is not bright. The banks whose charters allow a wide field of operation have a better chance of success.

(f) DEPOSIT AND DISCOUNT BANK.

Prior to 1873, leading financial journals made little reference to trust companies.⁹⁴ About this time the banks, feeling the competition, began to complain that they were taxed more heavily and subjected to greater restrictions than their rivals.⁹⁵

From the period beginning with, say 1885, there was a further development of trust companies in New York and some other places. Among these corporations were ones which were principally engaged in floating and guaranteeing Western loans, and were really mortgage, loan or investment companies.^{95a} But many of them conducted a regular banking business and were of the type that now prevails. At this time the complaints of the banks became

⁹³ Report of the New York Superintendent of Banking, Feb. 26, 1901, p. 160, Bowery Savings Bank, New York, deposits \$70,000,000, surplus \$10,000,000; p. 173, Emigrant Industrial Savings Bank, New York, deposits \$60,000,000, surplus \$10,000,000.

⁹⁴ Commercial and Financial Chronicle, New York, Jan. 20, 1883, vol. 36, No. 917, p. 65. Note 141.

⁹⁵ Rhodes Journal of Banking, vol. 13, pp. 741, 788. Bankers' Magazine, New York, vol. 59, p. 472.

^{95a} History of Banking, Knox, page 347.

decidedly pronounced.⁹⁶ It was especially observed that certain large deposits, which had been carried with the banks without interest, were decreasing. What was the cause? The trust companies paid interest⁹⁷ on deposits and consequently attracted them. Opposition still continues against trust companies, but not to the same extent as formerly; indeed, in some quarters, where there was hostile criticism, there is now favorable comment.⁹⁸ In 1897 the American Bankers' Association inaugurated a special section for trust companies.^{98a}

Possibly sentiment in regard to trust companies has changed, because it is realized that they are now firmly established, and that, although they compete somewhat with the older corporations, the interests of the two are closely allied.⁹⁹ In the first place the same men¹⁰⁰ are often connected with both, and in the second the trust companies are among the largest depositors of the banks.¹⁰¹ Through the banks the companies use the clearing house—an important agency in facilitating exchange and one exercising considerable influence upon financial affairs. No trust com-

⁹⁶ Table I. *Bankers' Magazine*, New York, vol. 43, pp. 659, 721; vol. 45, p. 852; vol. 46, p. 695; vol. 50, p. 599. *Commercial and Financial Chronicle*, New York, Jan. 10, 1885, vol. 40, No. 1020, p. 42. *Rhodes Journal of Banking*, vol. 18, p. 301.

⁹⁷ *Bankers' Magazine*, New York, vol. 43, p. 721; vol. 45, p. 852; vol. 50, p. 600. *Rhodes Journal of Banking*, vol. 13, p. 818. *Commercial and Financial Chronicle*, New York, vol. 67, No. 1728, p. 251.

⁹⁸ *Bankers' Magazine*, New York, vol. 50, p. 599; vol. 58, pp. 506, 507; vol. 59, pp. 471, 472; vol. 61, p. 157.

^{98a} Page 6.

⁹⁹ *Commercial and Financial Chronicle*, New York, vol. 69, No. 1780, p. 260; *Bankers' Magazine*, New York, vol. 59, p. 346.

¹⁰⁰ *Rhodes Journal of Banking*, vol. 16, p. 1178. *Commercial and Financial Chronicle*, New York, vol. 70, No. 1804.

¹⁰¹ *Rhodes Journal of Banking*, vol. 13, p. 959. *Bankers' Magazine*, New York, vol. 50, p. 599. *Report of New York Superintendent of Banking*, July 1, 1901, Note 117.

panies belong to the New York Clearing House.¹⁰² In 1899 this association passed a rule that the trust companies, which employed its service, should be subject to examinations and make reports similar to those exacted of non-member banks.¹⁰³ This regulation seems to be reasonable, and also that passed in 1902 in regard to cash reserves, yet these requirements, if they conflict with certain interests, may possibly not be strictly enforced, as the trust companies have friends in the association. The trust companies, moreover, have apparently sufficient power to establish, should it be necessary, a separate exchange, but, at present, too great a community of interests may exist for such an action.¹⁰⁴

Trust companies perform many of the functions of the regular banks, and although they do not possess the right of note issue, like the national banks, they are not hampered to any extent on this account, for note issue is not the profitable feature it was.¹⁰⁵ In place of this privilege that they lack, they have some advantages over these banks.

Trust companies in late years have usually accepted demand deposits, even in states where there has been a question whether they have had the legal right. Reference has already been made to the status of the case in Pennsylvania.¹⁰⁶ In Minnesota,¹⁰⁷ during a period of ten years previous to 1894, a number of conferences between representatives of the trust companies and the attorney-general of that state took place in regard to the powers of the companies to receive these deposits. The statutes of 1883 allowed trust companies to do a banking business as

¹⁰² Bankers' Magazine, New York, vol. 61, p. 712. Clearing Houses, by J. G. Cannon, New York, 1900.

¹⁰³ Commercial and Financial Chronicle, New York, vol. 69, No. 1794, p. 991. Bankers' Magazine, New York, vol. 59, p. 777. Clearing Houses, Cannon, p. 157. Note 120^a.

¹⁰⁴ Bankers' Magazine, New York, vol. 59, p. 472.

¹⁰⁵ Note 168.

¹⁰⁶ Note 50. Schedule II.

¹⁰⁷ Bankers' Magazine, New York, vol. 48, p. 392.

therein provided; but the provisions were so indefinite that a conflict of opinion prevailed as to the proper construction. Some companies received demand deposits, others refused them. By the law of 1894 the companies are not permitted to engage in banking.¹⁰⁸

In 1894 the Supreme Court of Missouri decided that a trust company had no legal power to take deposits subject to check, and that by doing so it violated its charter. But this act, according to the court, did not make the company a bank.¹⁰⁹ The officers who received such deposits, when the company was insolvent, were held not to be criminally liable, as they might have been, had the institution been legally empowered to do a banking business. In 1898¹¹⁰ the court in that state decided that a trust company had no power to receive deposits payable by check on which interest was not paid. The Bankers' Magazine,¹¹¹ in commenting upon the matter, said that as no rate of interest was fixed by the law, it would require little ingenuity to overcome the effects of this decision; for instance, by allowing a nominal rate of interest. In fact, trust companies in Missouri now receive demand deposits.¹¹²

These and other illustrations rather indicate that trust companies have, in some states, developed their banking departments outside of their recognized powers under the law. A reference to the charters of the first companies in New York and Pennsylvania emphasizes this fact, for it is there seen that banking is forbidden. It appears that the companies were originally established to manage estates and not to be banks, the latter being an institution which, according to the public sentiment of the time, should be under special regulations.¹¹³

¹⁰⁸ Schedule II.

¹⁰⁹ Bankers' Magazine, New York, vol. 50, pp. 60, 200.

¹¹⁰ Ibid., vol. 57, p. 85.

¹¹¹ Ibid., vol. 57, p. 16.

¹¹² Schedule II.

¹¹³ Note 33. Page 18, Trust Co.'s in Boston; p. 19, Trust Co.'s in Chicago.

As clear ideas did not always prevail as to what constituted banking operations outside of note issues;¹¹⁴ and as at times laws were passed and charters were given that were susceptible of different interpretations, some trust companies began to claim and exercise powers that were originally not intended to be allowed, if not strictly forbidden. In this way it would appear that they escaped regulations under which the banks were placed.

Legal exactions have been made of one institution that have not been of the other. The trust companies are not generally required like the national banks to hold reserves for the protection of deposits; and in some of the states, as in New York,¹¹⁵ where the state banks must keep reserves, the companies are more leniently treated. They have thus an advantage over their competitors, as they are not compelled to have on hand the same amount of idle funds yielding no revenue. They have profited by the freedom from restraint and have kept little cash¹¹⁶ in their vaults, most of what they have counted as cash being in reality money on deposit at interest with the banks. In the summer of 1901¹¹⁷ the forty trust companies in New York and Brooklyn had a reserve of only seven and a half million dollars and had deposited with the banks nearly a hundred million. On the other hand, sixty one-banks in that city had at the same time a reserve of over two hundred and sixty million dollars. The reserves of the banks cover both their own deposits and those of the trust companies.¹¹⁸

¹¹⁴ Rhodes Journal of Banking, vol. 13, p. 788; Bankers' Magazine, New York, vol. 2, p. 495 (Lockport Bank and Trust Co.); vol. 4, p. 100 (Duncan vs. Maryland Savings Institution, 10 G. & J. 340); vol. 53, p. 141.

¹¹⁵ Schedule XII.

¹¹⁶ Bankers' Magazine, New York, vol. 59, p. 599; vol. 58, p. 505; vol. 59, p. 472.

¹¹⁷ Report of New York Superintendent of Banking, July, 1901. Baltimore Herald, Aug. 13, 1901, quoting New York Journal of Commerce.

¹¹⁸ Rhodes Journal of Banking, vol. 13, p. 818.

Similarly the reserve of the Bank of England¹¹⁹ operates in regard to the deposits of the great joint stock companies of London, and the resources of the Imperial Bank of Germany aid the other banks in the empire.¹²⁰

In 1902 the New York Clearing House, as observed, passed resolutions requiring the trust companies clearing through that association to keep reserves in cash like the national banks.^{120a}

The trust companies loan considerable on collateral security and compete with the banks for this class of business. The same forty companies,¹²¹ just referred to, had loans of this kind out amounting to five hundred and ten million dollars and loans on personal security amounting to only thirty-eight million dollars. These companies, therefore, loan little in the latter way; it is the reverse with the banks.

Trust companies in a number of states underwrite various enterprises; national banks do the same, but probably not so extensively. At times the two institutions may coöperate as a syndicate in the same work, or the banks may advance largely on securities brought into existence by the schemes of the trust companies. Many of the companies have exercised a relatively free hand in making loans and investments; they have not been subjected to the same legal restrictions¹²² as the national banks,¹²³ and, in some instances, as the state banks.¹²⁴ The national banks are forbidden to advance more than one-tenth of their capital to

¹¹⁹ Rhodes Journal of Banking, vol. 13, p. 959.

¹²⁰ Bagehot, Lombard Street (Scribner Edition), pp. 309, 336. Quarterly Journal of Economics, Feb., 1900, p. 272, article, "The New German Bank Law," by Prof. Sidney Sherwood.

^{120a} Commercial and Financial Chronicle, New York, May 3, 1902, vol. 74, No. 1923, p. 917.

¹²¹ Note 117.

¹²² Political Science Quarterly, June, 1900, p. 250, article, "Trust Companies," by A. D. Noyes.

¹²³ National Banking Act, Revised Statutes of the United States, Sec. 5200.

¹²⁴ Schedules XIII and XIV.

one party, to loan money on real estate, or to own real estate except in a limited way. Although the requirements as to the limitation and character of loans have not always been observed, their existence has possibly had effect and prevented these banks from engaging in some profitable operations that have been open to the less hampered institution.

Trust companies have now grown to be of great importance, and in 1899 so many new ones were formed that it looked as if they were about to overshadow the banks in some places. In the following year there was an arrest of the rapid progress.¹²⁵ The set-back in New York was temporary; for, although in 1901 there was a decrease in the number of trust companies in that state, the gains in resources of those in existence were large.^{125a} The banks made progress during the last few years; they reaped a benefit from the active trade of the merchants, and shared in the general prosperity of the country.¹²⁶ A factor tending to make an unfavorable showing for trust companies for the six months ending January 1, 1900, was that a large number of new companies had come into existence during the early part of 1899.¹²⁷ This produced a greater supply than was needed, and in the struggle to get business some concerns under the management of inexperienced men engaged in undertakings which resulted in heavy losses.

The banks have a prestige in regard to the safety of deposits which the trust companies do not enjoy. There

¹²⁵ Commercial and Financial Chronicle, New York, vol. 70, No. 1808, p. 302; and report of New York Superintendent of Banking, Feb. 26, 1901, p. 17; Trust Companies in New York State, July, 1899, resources, \$722,000,000; Jan., 1900, resources, \$672,000,000; Jan., 1901, resources, \$798,000,000. Tables I and II.

^{125a} Table I.

¹²⁶ Tables II, III, IV and V.

¹²⁷ Commercial and Financial Chronicle, New York, vol. 70, No. 1808, pp. 303 and 306. Report of New York Superintendent of Banking, Feb. 26, 1901, p. 17.

is a general impression that government examinations of the national banks make them especially secure. No doubt, these inspections have rendered great service; nevertheless they are not thoroughly effective. Disclosures, at times, make it apparent that defalcations can escape notice for a long period during which a number of official examinations of the banks have taken place. The remark is occasionally heard from those in a position to know, that the federal inspectors are liable to accept with too much faith the calculations which they find in the bank records. It is believed by many that state inspection can be made, and is in some states, where trust companies are subjected to regulations, just as thorough as the system in operation in regard to national banks. Notwithstanding the fact that much of this claim in regard to state supervision must be admitted, the general public feel, and with reason, that a federal inspection usually gives greater protection than one conducted by a state¹²⁸; and the national banks get the benefit of this confidence.

In order to secure the prestige possessed by national banks and at the same time have greater freedom, the Chestnut Street National Bank and the Chestnut Street Trust and Savings Fund Company conducted business together in the same office in Philadelphia.¹²⁹ The close co-operation afforded a great opportunity for the practice of fraud and for the concealment of an insolvent condition by the temporary transfer of funds from one institution to the other. The final results exposed the evil of such a combination.

The advantage that prestige and previous possession of the field give to the old banks may long allow them to maintain their supremacy. But new financial institutions will be called into being by the growth of the country,

¹²⁸ Rhodes *Journal of Banking*, vol. 20, p. 1159.

¹²⁹ *Bankers' Magazine*, New York, vol. 59, p. 717. *History of Banking*, Knox, 1900, p. 464.

and these are likely to be especially among that class which is subject to least restriction.¹³⁰

(g) PROMOTING.

Trust companies with their large accumulation of funds are ever on the alert to get business, and afford an effective instrument in developing enterprises.¹³¹ But this is not a new character of work for financial corporations, either in this or in other countries; and trust companies have followed a course which has been pursued previous to their existence. Sometimes a corporation has been formed simply to finance a particular enterprise. Such was the case with the Credit Mobilier,¹³² which, operating under a charter of a Pennsylvania company, undertook to build the Union Pacific Railroad. It will be remembered that the Credit Mobilier became notorious in 1872 on account of one of the greatest political scandals which ever occurred in the United States.

Trust companies and other financial corporations greatly aid and encourage the development of large enterprises, but they usually engage in the undertakings in answer to some demand for them; and were they not the promoters, individuals or firms might, as often happens, take their place. When the financial corporations, interested in promoting railroad enterprises, went down in the crash of 1873, two great private banking firms concerned in similar operations failed at the same time.^{132a} At present the names of certain individuals and banking firms, in connection with great railroad enterprises, industrial combinations and other schemes of a gigantic character, are far more prominent than those of any trust company or other financial corpo-

¹³⁰ Rhodes Journal of Banking, vol. 21, p. 70.

¹³¹ Commercial and Financial Chronicle, New York, vol. 70, No. 1810, pp. 10, 410.

¹³² Lalor's Cyclopedia, vol. 1, p. 709. Appleton's Cyclopedia, Annual, 1873, pp. 213 and 671.

^{132a} Note 147.

ration. It is, however, a well-known fact that these men and firms are interested in and identified with banks and trust companies and use them largely as instruments to carry out their various operations.¹⁸⁸

¹⁸⁸ Commercial and Financial Chronicle, vol. 72, No. 1855, p. VI.

CHAPTER IV

STATE REGULATION

It is the decided opinion of many persons that the less supervision or regulation by a government which any business receives, the better will be the results. But whether the *laissez faire* doctrine be strongly cherished or not by its advocates, the idea is rapidly losing force in this country in the practical conduct of affairs and in the continual extension of governmental interference. The people of the United States have for years been accustomed to the supervision of national banks and have for a longer period been familiar with that in regard to state banks.¹³⁴ Trust companies have largely developed without these restrictions. In some states they have been brought under the same supervision as the banks, in others they have not.¹³⁵

Should trust companies be under state supervision? If it is admitted that banks not exercising the right of note issue should receive regulation, and if trust companies can and do perform all the functions of such banks, then it is difficult to see why they should escape the same exactions.¹³⁶

The companies have under their charge the funds of widows and orphans and trusts of a character around which every safeguard should be thrown. They have also large lines of deposits subject to check,¹³⁷ nevertheless they are not required to the same extent as the banks to keep reserves proportionate to deposits. In this respect they are

¹³⁴ History of Banking, Knox, New York, p. 404, etc.

¹³⁵ Schedules VII and VIII.

¹³⁶ Bankers' Magazine, New York, vol. 58, p. 507; vol. 59, p. 472. Rhodes Journal of Banking, vol. 13, p. 741.

¹³⁷ Note 117. Tables I, III.

generally more favored than the national banks and, in New York, Kentucky and several other states than the state banks.^{137a} Texas has a unique place; under the constitution of 1876 no corporation with banking privileges can be created or extended. Trust companies in New York and elsewhere have claimed that much of their deposits have been trust funds, and on the other hand that those of the banks have been of a kind which are more subject to an early or a sudden withdrawal; hence, that the restriction upon the banks has been more necessary.¹³⁸ In the summer of 1901,¹³⁹ however, a larger portion of the three-quarters of a billion dollars on deposit in forty trust companies in New York and Brooklyn was subject to check. There is not a great distinction at present between the deposits of the two institutions, nor should such be expected, for trust companies solicit all classes of deposits and allow interest on the same in order to obtain them.¹⁴⁰ The companies in some places have been so active in their efforts to get business that the banks, although disclaiming that they give interest on money placed with them by local depositors, are frequently compelled to offer this inducement to retain patrons. The trust companies are said to borrow, at times, money on collateral and reckon the sums thus received with their so-called deposits, in order to make a more favorable showing and thereby further attract similar funds. This practice, it is claimed, obtains also with other financial institutions. The foregoing instances are cited to show the force of competition in often compelling those who seek the same class of business to adopt the same methods. The concerns that are not subject to strict inspection are usually the first to resort to these means. Sooner or later

^{137a} Schedules II, XII.

¹³⁸ *Bankers' Magazine*, New York, vol. 58, p. 506.

¹³⁹ Note 117.

¹⁴⁰ Report of New York Superintendent of Banking, July, 1901 (interest paid on all but a small fraction of the deposits).

what is done leaks out, as it is difficult to keep such things secret; and what in the beginning is confidentially allowed as a special inducement to a few, becomes in the end a common practice.

It is evident that any regulation to be fully effective for the deposits of banks must have some application to those of trust companies. Should there come at the present time a financial panic, or a severe strain upon the money market, the trust companies, in some of the great cities, with their large lines of deposits and small or merely nominal reserves, would rather contribute to than check a catastrophe.

The superior organization of a trust company should not necessarily exempt it from regulation, for it is not unlike that of other corporations. It comprises a president, possibly one or more vice-presidents, and a board of directors; from this latter body is usually selected a smaller number who constitute an executive committee. In some instances the board of directors consists of twenty-five members. Frequently directors know, and are apparently expected to know, as little about the affairs of their company as outsiders. Some of them are put on the board on account of their prominence in the community, their names being used to produce a favorable impression upon the public, and others owe their position to the fact, that they can command business for the company. But whether appointed for these or other reasons, many of the directors may be nothing more than figure-heads, and may exercise little or no influence upon the policy of the company. The directors meet at more or less extended intervals, probably once a month, or not so often, and each may, according to a growing practice, receive about five dollars, or more, for every meeting attended. They usually transact business in a perfunctory manner, leaving the management of affairs entirely with the president and one or two controlling spirits of the executive committee. Much the same

comment as to the inefficiency of a directory, will apply with equal force to all classes of corporations, with the exception to an extent, of the banks. The directors of the latter may meet weekly, or oftener, to pass upon the paper offered for discount, and have an opportunity of performing this class of their duties with some degree of intelligence. Any security which is afforded to the depositors and stockholders by publicity of operations rather seems to be with the bank than with the trust company.

Although secrecy in the conduct of a business allows a wrong action to be easily concealed, close management is particularly effective, when capable men are in charge who direct their efforts solely to the development of their company. The opportunity for fraud, due to the concentration of power in the hands of one or two men and to the absence of state supervision, have led in some cases to unfortunate results. Public attention, at such times, has been directed to the matter, and the sentiment created that a need exists of protecting the interests committed to the care of these institutions.

A short time before the panic of 1873, the Brooklyn Trust Company failed under circumstances indicating gross mismanagement. The company had done a lucrative business, but was bankrupted by the defalcations of its president and secretary, both of whom had made heavy losses in speculations. Trust companies were then regarded as institutions that should be even more conservatively managed than banks, and it was not strange that there should have arisen—and especially after the financial crisis of 1873—a demand for the passage of laws to subject them to regulations similar to those under which banks had been placed.

The Commercial and Financial Chronicle,¹⁴¹ in the summer of 1873, in referring to the failure of the Brooklyn Company, stated editorially that the directors of a trust

¹⁴¹ Commercial and Financial Chronicle, New York, July 26, 1873, vol. 17, No. 422, p. 102, and Aug. 30, 1873, vol. 17, No. 427, p. 269.

company were not looked upon as managers of an ordinary bank, but as guardians of trust funds. The investments of this institution, it contended, should be like those of a savings bank, only such as were solid and safe beyond question.

In 1874¹⁴² the Bankers' Magazine, reviewing the report of the Comptroller of the Currency, said that trust companies were intended as repositories for trust funds, for the accumulation of deposits to be loaned on mortgage or invested in government bonds; that is, to be savings banks on a large scale. The article stated further that trust companies had at that time been converted into stock jobbing concerns, thus becoming factors of demoralization and defeating the original purpose for which they had been established.

In his report of December, 1873, the Superintendent of Banking of New York, in alluding to the rapid increase of the moneyed corporations which, he stated, were variously styled trust, loan, indemnity, guaranty, exchange, or safe deposit companies, recommended that they be brought under stricter state supervision. The designation, trust company, had not, at that time, the full significance which it has since obtained, and there was then in New York no system for regulating these companies. Previous to 1874¹⁴³—the year in which trust companies were placed under the charge of the state superintendent of banking—some of them were under the supervision of the comptroller, some reported either to the comptroller, to a judge of a supreme court, or to the superintendent of banking, while others did not report at all. The majority, if not all of them, were exempt from making stated reports to a supervisory department of the state, as the banks were required to do; and none were liable to an examination

¹⁴² Bankers' Magazine, New York, vol. 28, p. 520. (This is a review of the Report of the U. S. Comptroller of Currency that is referred to in Note 146).

¹⁴³ Schedules VII and VIII.

by any authorized state officer. The Superintendent urged that there was no reason why these companies should not be subject to regulation like the banks, for they did a deposit and savings bank business, and in some instances discounted paper.

The Comptroller of the Currency, in his report of 1873,¹⁴⁴ stated that the beginning of the monetary crisis of that year might be reckoned with the failure of the New York Warehouse and Security Company. Up to the time this company closed its doors, it had stood well. It had been established several years before to make advances on grain and produce shipped to New York; it afterwards undertook to finance a railroad which had a good foundation, but the enterprise proved to be too great for the resources of the Warehouse Company.¹⁴⁵ Such, at least, were the views expressed at the time.

Among the suspensions during the panic of 1873 were those of the Union Trust Company, and the National Trust Company, of New York,¹⁴⁶ and of the great banking houses of Jay Cooke & Company, and Fisk & Hatch. The two firms named, as also a number of financial corporations, had been largely interested in the negotiation of railroad securities.¹⁴⁷ In commenting upon the conditions of that period, the Comptroller of the Currency remarked that the money market had become overstocked with debt, that debt based on almost every species of property—railroad, state, city, and manufacturing and mining companies—had been sold in the market. The panic of that year, he said, might, in a great degree, be based upon the inti-

¹⁴⁴ Report of the U. S. Comptroller of Currency for 1873, p. XXVI.

¹⁴⁵ (Mo., Kas. & Tex. R. R.); Commercial and Financial Chronicle, New York, Sept. 13, 1873, vol. 17, No. 429, p. 341.

¹⁴⁶ Report of U. S. Comptroller of Currency, 1873, p. XXVI.

¹⁴⁷ Report of U. S. Comptroller of Currency, 1873, p. XXVI. Commercial and Financial Chronicle, New York, Sept. 20, 1873, vol. 17, No. 430, p. 375.

mate relations of the banks of New York City with the transactions of the stock board; from one-fourth to one-third of the bills received by the banks up to that time, since the Civil War, had consisted of demand loans to brokers and members of the Stock Exchange. These operations, the report continued, had a tendency to impede and unsettle, instead of facilitating the legitimate transactions of the whole country; the rule of business was to make money—to make it honestly, if possible, but at all events to make money.¹⁴⁸

If a financial crisis were to occur in the United States at the present time, much the same criticism as made in 1873 would be heard; but trust companies would come in for a greater share of the comment.

The trust companies and the state banks in New York,¹⁴⁹ as also in some other states, are now under similar regulations. Both institutions in New York are obliged to make reports to the banking department of the state and are subject to examination by official inspectors.¹⁵⁰ When state supervision¹⁵¹ was first inaugurated in New York in 1874, it was the cause of three trust companies ceasing to do business.¹⁵² The depositors, with claims amounting to six million dollars, were paid in full, but, if the state examinations had not been made, and only reports of the officers of the companies had been submitted, these concerns might have continued to operate until a worse condition of affairs had developed. A company, it is said, had seldom failed whose recent published statement—in case it was the practice to make the same—had not shown a surplus. The statement of a trust company in New

¹⁴⁸ Report of U. S. Comptroller of Currency, 1873, p. XXVIII.

¹⁴⁹ Bankers' Magazine, New York, vol. 61, p. 787. Schedules VII, VIII, XI, XII, XIII, XIV, XV, XVI, XVII.

¹⁵⁰ Note 128.

¹⁵¹ Notes 26, 27.

¹⁵² Bankers' Magazine, New York, vol. 61, p. 787.

York, that is now published in the reports¹⁵³ of the state superintendent of banking is comprehensive, and with the system of examination in force allows considerable state supervision of the institution. The same comment may be made in regard to the companies in some other states.

¹⁵³ Report of New York Superintendent of Banking, Feb. 26, 1901, pp. 521, 522. Bankers' Magazine, New York, vol. 61, p. 788.

FORM OF STATEMENT RENDERED BY NEW YORK TRUST COMPANIES.

RESOURCES.

- Bonds and mortgages.
- Stock and bond investments (itemized).
- Amount loaned on collaterals.
- Amount loaned on personal securities, including bills purchased.
- Overdrafts.
- Due from directors of the institutions.
- Due from banks.
- Due from brokers.
- Real estate, estimated present value.
- Cash on deposit in banks or other moneyed institutions.
- Cash on hand.
- Amount of assets not included under any of the above heads (accrued interest receivable, etc.).

LIABILITIES.

- Capital stock paid in.
- Surplus fund.
- Undivided profits.
- Deposits in trust.
- General deposits (by individuals, associations or corporations, payable on demand).
- Other liabilities not included under any of the above heads (accrued interest payable, etc.).

SUPPLEMENTARY.

Total amount of interest, commission and profits of every kind, received during the year.

Amount of interest paid to and credited depositors during the year.

Amount of expenses of the institution during the same period.

Amount of dividends on capital stock declared during the year, payable, etc.

Taxes paid during the year.

Amount of deposits on which interest is allowed at this date (January 1st).

Total amount of such deposits.

Rate of interest on same.

Amount of bonds and mortgages invested in during the year.

Amount received from bonds and mortgages paid or sold during the year.

Among the failures of loan companies was one, some years ago, in Minneapolis where little funds were found by the receivers to pay off its debts.¹⁵⁴ It was at first thought that the great office building which bore its name would be an important asset, although a mortgage for part of its value was recorded against it. A closer investigation revealed that the company had not an equity in this property. Another corporation had been formed with the same officers as those of the loan company, and through this means the interest of the latter in the building had been disposed of without exciting suspicion. Such transactions can be carried on without difficulty, and no doubt many of the large office buildings, that are supposed to be owned by the trust companies, belong to separate and distinct corporations.

As referred to above, a national bank and a trust company with similar names, occupied the same office in Philadelphia¹⁵⁵ and juggled accounts. The "American Loan and Trust Company, of Omaha,"¹⁵⁶ was bankrupted in 1893 by speculations in lands in Texas carried on by a local company of that state.

Corporations which do not act as trustees have, at the present day, the word trust in their titles. In commenting upon the practice, the Superintendent of Banking of New York recommended, in his report of 1899, the adoption of a regulation that would apply not only to corporations created by the laws of New York, but also to foreign trust companies which did some kinds of business in that state, although not permitted to act there as trustees. The suggestion was partially acted upon, and an amendment to the Corporation Act was passed in 1900 governing companies formed under the laws of New York.¹⁵⁷

¹⁵⁴ Rhodes Journal of Banking, Oct., 1893, vol. 20, p. 1114.

¹⁵⁵ Note 129.

¹⁵⁶ Rhodes Journal of Banking, vol. 20, p. 760. Schedules VII and VIII.

¹⁵⁷ Note 16. Schedules VI, XVIII.

The argument is advanced in some quarters that the directors and officers of a corporation, and the public also, should not be taught to rely simply upon government inspections; for at best these examinations are ineffective, and it is well for those who are interested to make investigation for themselves. The officials of a national bank in Baltimore¹⁵⁸ employed, a year or so ago, special experts to supplement the federal examination. Many contend that it is better for a people to be educated to be self-reliant, and attention is called to the fact that in some states where savings banks and trust companies have virtually received no regulation they have been conservatively and successfully managed. This may be admitted, but numerous instances of frauds and failures clearly demonstrate that such a statement of the case is by no means complete. A good system of banking is of extreme importance to all classes of people. It is, therefore, easily understood why a public demand exists for the regulation of financial institutions; and why some persons advocate this measure, who are generally opposed to an enlargement of the sphere of the State.

There is a wide difference in the laws throughout the Union in regard to trust companies, and the suggestion has been made that in order to get a uniformity, it may be well to have a constitutional amendment and bring trust companies under federal jurisdiction. This plan is in harmony with that of having all corporations regulated by the general government; and in the view of some it will not be a great step in extending the exercise of this power from the deposits of national banks to those of other financial institutions.

With the rapid changes, now occurring in industrial and financial conditions, it is impossible to forecast with any degree of confidence the political action, which may in

¹⁵⁸ Merchants National Bank.

consequence follow.¹⁵⁹ Nevertheless it may be said that, from present appearances, no extension of federal authority over trust companies may be expected in the near future. Any uniformity which may be obtained in the laws will, probably, be brought about by similarity of conditions in the different parts of the country and through efforts made by the citizens in the individual states.

There is always opposition to any increase of governmental interference, and often it is well to be slow in bringing about radical changes. Trust companies have in some states been placed under little regulation, and the fact that they have exercised a wide latitude of action, has enabled them to build up large and successful businesses. In many instances it may be a hardship and injustice to subject these institutions suddenly to great restrictions. When legislation of this character is undertaken, a conservative course in the beginning seems to be the wise one; and later, if it becomes necessary, more stringent measures may be adopted.

The success of trust companies seemingly indicates, that the need exists for an institution with the power to advance large sums to a single concern and to engage in what may be regarded as speculative ventures. If it be deemed better that another corporation with more limited privileges shall manage trust estates, separate companies may be established for the purpose. Some trust companies are already in existence—that is, one of each of the two classes may be mentioned—which have built up a large business in one or the other of these operations and have mostly, if not entirely, confined themselves to it; if they have acted

¹⁵⁹ Baltimore News, Sept. 16, 1901; extract from the speech of Vice-President Roosevelt (now president), delivered Sept. 2, 1901, at Minneapolis: "The vast individual and corporate fortunes, the vast combinations of capital, which have marked the development of our industrial system, create new conditions, and necessitate a change from the old attitude of the state and nation toward property."

as trustees under wills,¹⁶⁰ they have not devoted their efforts to promoting enterprises, or the reverse.¹⁶¹ This being the fact, the separation of the two functions can, of course, be accomplished, but such an action would have the effect of retarding the development of the institution.

It is often difficult, if not impossible, to observe the drift of public sentiment and to determine the factors at work producing results. It is only speaking in a broad way, when it is suggested that judging from surface indications there is little demand at present for a law to prevent the same company acting both as trustee under a will and as promoter of enterprises. Regulations requiring trust companies to deposit security with the state to protect trust funds, and those placing them much on the same basis as state banks, are the ones, it appears, likely to be sooner or later adopted where such a regulative system is not already in operation.¹⁶² The action, in 1902, of the New York Clearing House, in regard to cash reserves for deposits in trust companies may be significant.^{162a}

Trust companies are either formed under special acts of a state legislature or under a general law of a state. - In New York both methods are in force, and when the General Law is made use of, the superintendent of banking is empowered to refuse incorporation to any new company if, in his opinion, there is a sufficient number in existence. The power is delegated to this officer of limiting the number of trust companies in the state, unless the legislature exercises its right and creates additional ones.

In the states where charters for these corporations have been granted by special acts, they have sometimes been obtained in an unfair way and procured to be sold to the

¹⁶⁰ Safe Deposit and Trust Co., Baltimore.

¹⁶¹ Maryland Trust Co., Baltimore; Laws of Maryland, 1892, Chap. 168, p. 263. Has, however, absorbed Guardian Trust Co. with powers of executor; Laws of Maryland, '90, Chapter 539, page 631.

¹⁶² Schedules VII, VIII, XI, XII, XIII, XIV, XV, XVI.

^{162a} Notes 120^a, 137^a.

highest bidder. In addition to the general evils of private legislation, there is always a danger in such legislative grants of a privilege being included that was not intended and was concealed by a "snake in the bill." Many of the states, after having tried the other system, have adopted a general law under which corporations of this kind must be chartered in order to get an existence. Maryland is an example of the opposite policy.¹⁶³

¹⁶³ Schedule V.

CHAPTER V

CONCLUSION

PLACE AND CAUSE OF DEVELOPMENT.

A slight review will aid in fixing more clearly upon the attention what is the place that is now occupied by trust companies, and what are some of the causes that have led to their development.

It has been noted that corporations with power to execute all lawful trusts have existed a great many years in the United States. The earlier ones exercising this privilege were insurance companies which were authorized to act as trustees, but only engaged in such operations as an auxiliary to their insurance business. Trust companies still continued to be classified with insurance associations, even when they began to be operated as separate institutions.

According to general impression the trust powers were originally extended in some of the states to corporations merely to allow them to manage trust funds, and not to establish banking concerns.¹⁶⁴ This latter idea appears to be correct, for the earliest companies empowered to act as trustees were forbidden by their charters to engage in banking. In spite of this fact, trust companies have become banking institutions and have large lines of deposits; they compete with the national banks, but are not subjected to the same restrictions. They have been formed and successfully operated in the smaller towns, but it is in the large financial centres that they have more especially developed;¹⁶⁵ in New York and Chicago, some of them have deposits

¹⁶⁴ Bankers' Magazine, New York, vol. 59, p. 471. Nation, New York (Sept. 21, 1899), vol. 69, p. 220.

¹⁶⁵ Bankers' Magazine, New York, vol. 58, p. 505. Table VII.

ranging from fifty to seventy million dollars.¹⁶⁶ In Chicago, however, they are state banks with trust powers.

There seems to have been a recognition on the part of the banks in New York for the first time, about 1873, that there was a new and serious competitor against them in the field. After the financial panic of that year the banks felt the pressure of the hard times; and, therefore, being sensitive to the effects of competition, they more keenly realized that deposits were diverted from them, and that some enterprises in which they were engaged were in process of absorption by another institution. Naturally they complained of any unfair advantages that worked against them. It was, however, not until 1885 or 1887 that the great development of trust companies in New York took place.¹⁶⁷ About this time the profits derived from note issue were lessened and banks commenced to decrease their circulation.¹⁶⁸

The deposit system was formerly of minor importance to that of note issue in banking; the condition has changed. In England and the United States the habit of depositing money in bank and withdrawing it by check is highly developed, and in parts of the continent of Europe the custom has greatly extended. In Germany some banks which issued notes have preferred rather to surrender this power than to submit to the government restrictions incident to it. They have found it advantageous to have a relatively free hand in the management of their affairs and

¹⁶⁶ Report of New York Superintendent of Banking, July, 1901. Commercial and Financial Chronicle, New York, vol. 70, No. 1820, p. 924. Report of Auditor of Illinois, Dec. 11, 1901, p. 43.

¹⁶⁷ Bankers' Magazine, New York, vol. 43, pp. 659, 721. Table I.

¹⁶⁸ Report of the Monetary Commission, Chicago, 1898, Chart II, opposite p. 206; note circulation of national banks in U. S.; Reports of the U. S. Comptroller of Currency: Dec., 1884, \$280,000,000; Dec., 1885, \$260,000,000; Dec. 1886, \$200,000,000; Dec., 1890, \$120,000,000; Oct., 1897, \$200,000,000; Oct., 1900, \$332,000,000; Oct., 1901, \$360,000,000. Bankers' Magazine, New York, May, 1902, vol. 64, p. 653.

have not seriously felt the loss of the right to issue notes, as their deposit lines have grown to large proportions. Some of the great banks in Germany occupy much the same place respecting large enterprises, as do the trust companies in the United States.¹⁶⁹

It is readily seen how trust companies have been aided in their growth by the increased importance of the deposit system, for the monopoly by the national banks of note issue is no longer the great advantage that it was.¹⁷⁰ Trust companies have been favored by freedom from the regulations to which the banks have been subjected. They have consequently been allowed to engage more than the restricted institutions in the huge schemes which the changes in the industrial organization and the rapid development of the country have required to be undertaken.

Conditions, in general, have no doubt made a place for an institution which advances large sums in a single venture and is free from restrictions as to the character of its investments. All trust companies, however, may not engage in financing enterprises, for at least one of them¹⁷¹ devotes itself to what was originally considered the legitimate operations of a trust company and what may be called a strictly trust business; that is, acting as trustee or executor and managing estates and trust funds. It appears, however, to be true that the enormous development of trust companies has largely been due to their relations with railroad and industrial corporations.¹⁷²

The idea has been advanced that trust companies owe success not merely to the state of affairs, but also to the fact that they have been managed by more enter-

¹⁶⁹ Bankers' Magazine, New York, vol. 63, p. 855. Commercial and Financial Chronicle, New York, vol. 72, No. 1855, p. 4. Note 120.

¹⁷⁰ Commercial and Financial Chronicle, New York, vol. 70, No. 1808, p. 303.

¹⁷¹ Note 160.

¹⁷² Commercial and Financial Chronicle, New York, vol. 70, No. 1803, p. 59; vol. 72, No. 1812, p. 508.

prising and capable men. The success of the large banks of New York clearly demonstrates the contrary without the necessity of further evidence.

Among other functions which they perform, trust companies execute various trusts, manage estates and promote enterprises. They do a safe deposit business; this is a feature that may be adopted and carried on conveniently by almost any financial institution in connection with its other departments, or it may be conducted by a separate corporation. In some states trust companies insure the titles of property, in some they act as bondsmen. Title insurance and bonding companies are regarded in the public mind as trust companies; they are generally, but not always, distinct concerns.

Trust companies engage in general banking operations. They do not restrict their deposits to trust funds; they solicit and receive the same kinds as are sought by other banks. The old savings banks occupy a position which they will probably long retain. It may, nevertheless, happen that their rivals will in time make gains by offering higher rates of interest and extending inducements in the way of greater conveniences. The small savings banks will be placed at considerable disadvantage in the contest.

At present, the trust companies in New York confine, for the most part, their call and time loans to those secured by collateral, they advance relatively small amounts on personal security. The companies in Philadelphia are not permitted to discount paper, those in Chicago are principally banks with trust powers. The national banks engage more largely than formerly in certain classes of operations and seek to accommodate themselves to the changed conditions. With discrimination against them, banks of issue will continue to have a place in the business world; but from the outlook it seems that, in the formation of new financial concerns, the tendency will be more to organize them upon a basis that affords the broadest privileges. The trust companies offer some advantages over

other existing institutions; they are allowed a wider scope of action than the national banks, and with their diversified interests, may make one department aid the development of another.¹⁷³

Some trust companies have branches.¹⁷⁴ Three companies of New York, and one of Boston, were authorized, in 1901, to act as trustees under the General Corporation Law of Illinois.¹⁷⁵ The North American Trust Company, of New York,¹⁷⁶ established financial institutions under its management not only in different parts of the United States, but also in Cuba. A great company operated on this principle with capable officers would have large resources at its command; it would have a wide field of operations and could conduct business at a low rate of expense. A lack of legal provision or legal prohibitions in regard to such extensions may, in a measure, be overcome, through different companies under the control of a single interest.^{176a}

The same influences that have operated to combine railroad and industrial corporations have tended to produce similar effects among financial institutions.¹⁷⁷ Consolidation has taken place not only among trust companies that have already been established, but also among concerns whose organizations have not been completed.¹⁷⁸ The Produce Exchange Trust Company of New York¹⁷⁹ suspended in 1899 and afterwards reorganized under a differ-

¹⁷³ Political Science Quarterly, June, 1901, p. 250; article "Trust Companies," by A. D. Noyes. Note 123.

¹⁷⁴ Bankers' Magazine, New York, vol. 62, p. 258; vol. 63, p. 855. Commercial and Financial Chronicle, New York, vol. 70, No. 1807, p. 262. Schedules III, V.

¹⁷⁵ Report of Auditor of Illinois, Dec. 11, 1901.

¹⁷⁶ Commercial and Financial Chronicle, New York, vol. 70, No. 1812, p. IX; vol. 70, No. 1820, p. 925; vol. 72, No. 1854, p. 29.

^{176a} Baltimore Sun, June 16, 1902 (editorial).

¹⁷⁷ Bankers' Magazine, New York, vol. 63, p. 315.

¹⁷⁸ Commercial and Financial Chronicle, New York, vol. 70, No. 1806, p. 213; No. 1811, p. 460; No. 1813, p. 564.

¹⁷⁹ Commercial and Financial Chronicle, New York, vol. 70, No. 1800, p. 108.

ent management with a son of the late Mr. Jay Gould as president. This reorganization caused the abandonment of a new company that was about to be formed to take care of the large interests of the Gould family—interests which comprise great telegraph and railroad properties. The Produce Company, under the title of the Bowling Green Trust Company,¹⁸⁰ in a short time built up a large deposit line and became established upon a solid foundation. This case gives some idea of the operations that are engaged in by these companies, and serves as one of the many evidences of the great power of wealth controlled by a single directing force.

In Illinois the state banks are granted trust powers upon the proper deposit of funds with the auditor of the state. In other words, trust companies may be created in this way with banking privileges, and such concerns are regarded primarily as banks. The principle that trust companies are banks is becoming more fully recognized. Although differences may long continue to exist, it appears that the trend of legislation in New York and in a number of other states is to place upon an equal footing these two financial institutions that operate under state franchises.

There is, as is well known, a general tendency of corporations to supersede individuals in performing certain functions and, if the conclusions advanced in this paper are correct, it appears that the following may also be mentioned among the causes for the development of trust companies:

1. The place for an institution making large advances in a single venture and exercising a free choice in its investments—one not hampered with the restrictions to which the national banks have been subjected.¹⁸¹
2. The increased importance of deposits relative to the issue of bank notes, and the payment of interest¹⁸² on demand deposits.

¹⁸⁰ Report of New York Superintendent of Banking, July 1, 1900, p. 445: general deposits, \$10,000,000.

¹⁸¹ Rhodes Journal of Banking, vol. 21, p. 70.

¹⁸² Bankers' Magazine, New York, vol. 28, p. 518.

3. The growth of investments in government and corporate securities, and the demand for an institution to manage estates largely consisting of these.

4. The combination in one company of various classes of financial business, each aiding to build up the other.

In the analysis of social problems some factors are easily overlooked and others given undue value. As to what will come to pass, uncertainty necessarily prevails; the present system of exchanges may be much altered, and indeed the fundamental principles regarding property rights may be modified. But whatever may have been the cause of their growth, or whatever may be their future, it can be said without question that trust companies are, at present, important financial institutions in parts of the United States.

APPENDIX I

THE FARMERS' LOAN AND TRUST COMPANY OF NEW YORK. (Sketch prepared by the Company.)

Although the majority of the trust companies of this country have been organized within the past twenty-five years, it should not be concluded that the financial world had not felt their need before then, for as early in the last century as February 28, 1822, the first trust company was incorporated and a charter granted to The Farmers' Fire Insurance and Loan Company, of New York, which name was changed by an act of the legislature passed April 30, 1836, to The Farmers' Loan and Trust Company.

The original twenty-one directors held their first meeting March 9, 1822, and elected John T. Champlin President, and at subsequent meetings Archibald McIntyre was elected Secretary and John Ely, Jr., Assistant Secretary. In the order of their election, the following persons have served as President:

John T. Champlin,	Lewis Curtis,
Oliver H. Hicks,	Charles Stebbins,
Fred A. Tracy,	Robert C. Cornell,
Elisha Tibbets,	D. D. Williamson,
Henry Seymour,	Rosewell G. Rolston,
Edwin S. Marston.	

The original act of incorporation gave to the company power to make loans on mortgages, which authority is emphasized by being stated first in the act, and having proportionately a larger part of the act devoted to the matter of making such loans and of foreclosing the mortgages, but at the same time the feeling that was then prevalent, that corporations should not hold real prop-

erty, any further than was absolutely necessary for their corporate purposes, was manifested by the provision that any mortgaged property which was taken on foreclosure should not be held longer than five years, and that if held for a period beyond that term, the title should immediately be forfeited to and vested in the people of the State of New York.

Authority was also given to this corporation to purchase and hold any stock or foreign debt, or the stock of any corporation; which is interesting in view of the subsequent history of corporations, in reference to which legislation for some time practically forbade their acquiring stock in other corporations.

The corporation also originally had power to insure against loss by fire and to grant life insurance and annuities.

By an act passed April 17, 1822, the same session of the legislature which passed the act of incorporation, it was provided: "That the said corporation shall also have authority to receive and take by deed or devise any effects and property, both real and personal, which may be left or conveyed to them in trust and to assume, perform and execute any trust which has been or which may be created or declared by any deed or devise as aforesaid; and the said corporation are authorized to receive, take, possess and stand seized of, and to execute any and all such trust or trusts in their corporate capacity and name, in the same manner and to the same extent as trustee or trustees might or could lawfully do, and no further."

This grant of power to act as trustee is undoubtedly the earliest bestowal of such powers upon any corporation in the State of New York, if not in the country. The language employed is of the broadest character possible.

The early acts relating to this trust company are also interesting as reflecting to a considerable degree the feeling of jealousy which was prevalent in this country in the early part of the last century, to the formation of banks

and moneyed institutions. The original act of incorporation of the trust company provided that nothing in the act should be so construed as to authorize the said corporation to receive any deposit or deposits, nor to discount any promissory note, bond, due-bill, draft, or bill of exchange, nor shall it be so construed as to allow any banking privileges or business whatever.

The subsequent history of this trust company has emphasized the truth that persons in creating business institutions are often unable to foretell the course of development of those institutions in the future. It is well known that at least one of the banks in New York City at the present time was established under a charter, the main object of which was to supply the city of New York with water. That corporation long years ago ceased to supply any water, but the bank has continually grown, and to-day is one of the important financial institutions of the city.

So in the case of the Farmers' Loan and Trust Company, which was organized as an insurance and loan company, the last outstanding life insurance policy, which was issued on February 23, 1838, was not paid until February 28, 1898,—sixty years after the date of its issue. As we have already stated, the very first power given to the Company was that of making loans on mortgages, and the purpose of this power was set forth clearly in the act, showing that the design was to aid the citizens of the state, residing in the country. Under its charter the Company was required, within one year from its incorporation, to make loans on the security of real estate within the State of New York and within the limits of the Southern District of New York, to the amount of at least one hundred and fifty thousand dollars, and when the capital stock of the Company was increased from five hundred thousand dollars, which it was originally, to one million dollars, such increase was made conditional on the investment of an additional one hundred and fifty thousand dollars

in bonds and mortgages on lands within the city and county of New York.

Through its operations in farm lands this Company acquired title to large tracts of lands in various counties in the State of New York. Regarding the land located in Erie County and bordering on Lake Erie, there has arisen in recent years a question both unique and interesting. We quote from a report published not very long ago:

"After the American Revolution a controversy between New York and Massachusetts, as to which state had the fee of and dominion over all the western New York territory, became acute, each claiming under a separate grant from the English Crown. This controversy was settled by what is known as the 'Treaty of Cession,' which was executed in December, 1786, according to the terms of which the western boundary line of the lands ceded to Massachusetts in this vicinity was the center of Lake Erie. To the State of New York was ceded all the claim, right and title which the Commonwealth of Massachusetts had to the government, sovereignty and jurisdiction of the lands and territories claimed by the State of New York. On May 11, 1791, the Commonwealth of Massachusetts conveyed to Robert Morris a great tract of these ceded lands. Whatever title Robert Morris obtained from Massachusetts passed through various intermediate conveyances to the Holland Land Company about the year 1798, and on January 27, 1838, the Holland Land Company conveyed to The Farmers' Loan and Trust Company all its unsold lands in Erie County. The question in dispute is whether the conveyances made in 1838 by the Holland Land Company to this Company gave it title to the lands under water, due to the encroachment of the water on the land since the time of the ceding of the lands to New York State by the Commonwealth of Massachusetts under the terms of the treaty."

The trust functions of the corporation, which are given, as we have said before, by a supplemental act passed at

the same session of the legislature which incorporated the Company, have been exercised at an increasing rate, and the accumulation of wealth in recent years has demanded more and more the exercise of those powers.

The change from established customs is always attended with many misgivings, but more especially is this true in respect to any thing having to do with financial transactions. For years individuals have been acting as executors and trustees, but the substitution of trust companies for individuals, which was made gradually at first, is now taken as a matter of course, and persons having large estates to a great degree prefer trust companies to individuals. Experience has shown that the appointment of individuals to the office of executor does not, in many instances, successfully accomplish the results desired by the testator. The person appointed may die before the testator, requiring a change in the will, or may die after the testator, leaving the estate only partially administered, necessitating confusion and the appointment of an administrator with the will annexed. Sometimes even the continuance of the executor in office is worse than his death. He may be stricken with disease, his faculties become impaired, or for other reasons he may become incompetent, and then he must be removed and another appointed in his place. All these changes involve an expense to the estate and more or less anxiety to those interested in it. The Farmers' Loan and Trust Company can act as executor, and a testator in appointing it will know that the executor of his own appointment will administer his estate.

The corporation, through its years of dealing with trusts and trust estates, has accumulated an experience which no individual ever could hope to have. This experience has resulted in improved methods of dealing with estates, and has developed a corps of officers and clerks whose time and attention are being constantly directed to the questions arising, and who are not dis-

tracted, as individual executors and trustees generally are, with the cares and annoyances of their own business.

The growth of the Company is evidenced by the increase in its deposits as shown by the following comparative statement, covering a period of twenty years:

	Deposits.
January 1, 1880.....	\$ 6,270,892.06
January 1, 1890.....	23,964,838.50
January 1, 1900.....	41,519,851.25
April 1, 1902.....	61,079,287.23

APPENDIX II

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES.

(Article compiled by Albert W. Rayner principally from the sketch of the Company by H. S. Morris.)

A group of men gathered at a coffee house in Philadelphia in the winter of 1809 and discussed the feasibility of organizing a company the main objects of which were to be the insuring of lives and granting of annuities. Several companies devoted to marine and fire insurance were already in existence. Notwithstanding this fact, the Pennsylvania Company was slow to organize and did not succeed in procuring a charter until March 10, 1812.

During the period between 1812 and 1829, the progress of the Company was steady. The first president was Joseph Ball, who was elected March 17, 1812. Mr. Ball served in 1791 as a director of the Bank of the United States, was connected with the Batsto Iron Works and was one of the original Board of The Insurance Company of North America.

It is of especial interest to economists to mention the name of Condé Raguet, who was at the head of the Pennsylvania Company from 1816 to 1819. One critic, in speaking of him says that some of his writings on financial and economic topics were the best ever produced in America. Condé Raguet suggested and helped to carry to completion the earliest savings bank in Philadelphia; he was also editor of "The Philadelphia Gazette and Common Intelligencer."

Another President of the Pennsylvania Company was

Robert M. Patterson, who served from 1822 to 1826. Mr. Patterson was especially honored for his intellectual attainments. He had been educated abroad and completed a course of chemistry under Sir Humphrey Davy. Upon returning to this country, he was identified with academic institutions and societies of learning, and for several years occupied the position of Director of the United States Mint at Philadelphia.

These names are but a few of the prominent ones that have been connected with the Pennsylvania Company.

In 1831 attention was attracted to the great success of a new undertaking in India, called Agency Houses, which were concerns organized to transact business for trustees, receive money on deposit, administer estates, etc. It was the desire of the managers of the Pennsylvania Company to invest their organization with these powers; but on account of their conservatism there was a delay of several years before this was done.

Mr. Harrison S. Morris says in his sketch of the Pennsylvania Company:

“In the early part of 1836, the most important advance made in the affairs of the Company, since its organization, was finally consummated when the Governor of the State, in whose honor the corporation was named, approved a supplement clothing the Pennsylvania Company with authority to enter into the business of executing trusts.

“This new privilege greatly widened the usefulness of the Company in every way. The fullest powers were given it for carrying on the trust business. Under the terms of the supplement, it is allowed to receive property, real and personal, in trust, and to accept trusts of every description, while the courts are permitted to appoint the Company to the offices of Trustee, Assignee, Guardian, and Committee of Lunatics.

“It is thus plain that a new career was open to the already prosperous organization, and its efficient management was not slow to reap the rich harvest in store.”

The new branch of the Pennsylvania Company's business was taken up with energy and before many years the trust transactions were among the most profitable as well as the most important ones of the institution. The gradual decline of the life insurance branch followed, and with the rivalry of new insurance organizations, which were adopting methods of competition not desirable for the Pennsylvania Company on account of its trust business, the ultimate relinquishment of underwriting insurance became an advisable policy, and the Company, after 1872, issued no new policies of insurance.

During a long period of years, the Company has frequently changed location. It is interesting to note, in view of the fact that its inception took place in a coffee house, that it eventually secured for its established home a site which was formerly occupied by a wayside inn.

Statistics strengthen comments. In regard to the trust estates under its charge it may be said that in 1895, the Company controlled one hundred and thirty-six millions of securities, taken at their par value, and received, during the year, more than a million dollars for rentals. In 1901 the deposits were eleven million five hundred thousand dollars, and the trust funds amounted to one hundred and fifty million dollars. The capital was originally five hundred thousand dollars, it was afterwards increased to two millions of dollars. In conclusion, it may be stated that between 1875 and 1896 it loaned over one hundred and twenty million dollars without incurring loss.

APPENDIX III

SCHEDULES

Trust Company Legislation in the United States, with some comparisons in regard to State Banks.

Prepared for George Cator by John Burton Phillips,
Ph. D.

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ABBREVIATIONS IN THE SCHEDULES

Ann. S. Annotated Statutes.

Ballinger's S. Ballinger's Annotated Codes and Statutes of Washington.

Bates' S. Bates' Annotated Ohio Statutes. Revision of 1897.

Birdseye's S. Revised Statutes, Codes and General Laws of New York.

C. C. Civil Code.

C. L. Compiled Laws.

C. S. Compiled Statutes.

G. L. General Laws.

G. S. General Statutes.

Horner's S. Horner's Annotated Statutes.

Hill's L. Hill's Annotated Laws of Oregon, 1892.

Mills' S. Mills' Annotated Statutes.

P. and L. Pepper and Lewis' Digest, 1894.

P. G. L. Public General Laws.

P. S. Public Statutes.

R. L. Revised Laws.

R. S. Revised Statutes.

S. Statutes.

S. and H. Sandels and Hill's Digest.

NOTE.—When not otherwise stated, the numbers in the Schedules refer to the Session Laws of the respective States.

SCHEDULE I.

STATES AND TERRITORIES.	POWERS OF TRUST COMPANIES.			
	Safe deposit.	Fidelity insurance.	Title insurance.	
Alabama	No	trust company	legislation.	
Alaska	"	" " "	" "	
Arizona	"	" " "	" "	
Arkansas	No special provisions; probably nothing to prevent in general law.			
Connecticut	Yes. '91, p. 102.	Yes. '91, p. 102.	No.	
Columbia	Fixed by charter.	Fixed by charter.	Fixed by charter.	
Delaware	" "	" "		
Florida	Yes. Code, §715.	Yes.	Yes.	
Georgia	No	trust company	legislation.	
Hawaii	Yes. '91, p. 173.	No.	No.	
Idaho	Probably have all these powers because organized under gen'l corporation law.	Yes. '91, p. 26.	Yes. '91, p. 26.	
Illinois	Yes. '91, p. 26.	Yes. R. S. '99, p. 470.	Yes. R. S. '99, p. 470.	
Indiana	{ Yes. R. S. '99, p. 470.	{ Banks may have trust powers by fulfilling requirements.	{ Banks may have trust powers by fulfilling requirements.	
Iowa	No	legislation on banks or trust companies.		
Kansas	Yes. S. '97, §3815a.	No.	No.	
Louisiana	No.	Yes. '01, ch. 407.	Yes. '01, ch. 407.	
Maine	Yes.	No.	No.	
Massachusetts	Yes.	No.	No.	
Michigan	Yes. '88, ch. 413.	No.	No.	
Minnesota	{ Powers fixed by charter.	{ Powers fixed by charter, trustee without usual bond, cannot incur liability as of surety.		
Mississippi	Yes.	Fixed by charter.		
Missouri	Powers fixed by charter.	No.	No.	
Montana	Yes.	Yes. S. '94, §2849.	No.	
Nebraska	Yes. S. '94, §2849.	Yes. '97, ch. 33.	No.	
Nevada	No.	Yes. '91, p. 99.	Yes. '91, p. 99.	
New Hampshire	Yes. '91, p. 99.	Yes. Civil Code, §604.	No.	
New Jersey	Yes. Civil Code, §604.	No	trust company legislation.	
New Mexico	"	" "	" "	
New York	Banks and trust companies are specially chartered.			
North Carolina	Yes. Code, '99, §3258.	Yes. Code, '99, §3258.	Yes. Code, '99, §3258.	
North Dakota	Powers fixed by charter.	Yes. '99, ch. 174.	Yes. '99, ch. 174.	
Ohio	Yes. '99, ch. 174.	Yes. '99, ch. 174.	Yes. '99, ch. 174.	
Oklahoma	Act provides for savings banks and trust ass'ns. Usual trust powers not mentioned.	No, unless by special charter	No, unless by special charter	
Pennsylvania	Yes. '01, ch. 443.	No.	Yes. '01, ch. 443.	
Rhode Island	Yes. Bates' S. §3821a.	trust company legislation.	No.	
South Carolina	No	Yes. '01, p. 99.	Yes. '01, p. 99.	
South Dakota	Yes. '01, p. 99.	Yes. '95, ch. 286.	Yes. '95, ch. 286.	
Tennessee	Powers fixed by charter.	Fixed by charter.	Fixed by charter.	
Texas	" "	" "	" "	
Utah	Yes. Ann. S. '99, §4205.	Yes. Ann. S. '99, §4205.	Yes. Ann. S. '99, §4205.	
Virginia	Yes. Code, '96, §2090.	No.	No.	
Washington	Yes. R. S. '95, §642.	Yes. R. S. '95, §642.	Yes. R. S. '95, §642.	
West Virginia	No. R. S. '98, §423.	Yes. R. S. '98, §423.	Yes. R. S. '98, §423.	
Wisconsin	Powers fixed by charter.	Fixed by charter.	Fixed by charter.	
Wyoming	Powers fixed by charter.	"	"	
Wyoming	Yes. '01, ch. 85.	Yes. '01, ch. 85.	Yes. '01, ch. 85.	
Wyoming	No provisions on these subjects in			
Wyoming	Yes. S. '98, §1791d.	Yes. S. '98, §1791d.	State.	
Wyoming	Yes. '88, ch. 88.	No.	No.	

No trust companies in State.

In the District of Columbia the same company may not do safe deposit, fidelity and title insurance business.

STATES AND TERRITORIES.	SCHEDULE II.		SCHEDULE III. ³	SCHEDULE I.
	Banking privileges of trust companies.	Receive demand deposits.	May trust companies conduct branches?	May bank and companies occupy same office?
Alabama			No provisions.	No provision.
Arkansas ¹			"	"
Arizona ²	Yes.	Yes.	"	"
California	Yes.	Yes.	"	"
Colorado	Yes. '91, p. 102. Mills' S. §544c. Shall not engage in banking.	Yes. '91, p. 102. Mills' S. §544c. Shall not engage in banking.	"	"
Connecticut	Yes. Fixed by charter, '01, ch. 143.	Yes.	No.	Yes.
Delaware	Yes. Governed by charter.	No.	No provisions.	No provision.
Dist. of Columbia	Yes.	No.	No.	"
Florida	No trust company legislation.			
Georgia	Yes. '98, p. 78, §3. May engage in banking.	Yes.	No provisions.	"
Idaho	Yes. '01, p. 26.	Yes. '01, p. 26.	"	"
Illinois	No. R. S. '99, p. 470, but banks may qualify under trust act.	No.	"	"
Indiana	Yes. '93, p. 344. Ann. S. '97, §3815m.	Yes. '93, p. 344.	No.	"
Indian Territory	Yes.	Yes.	No provisions.	"
Iowa	No. Code '97, §1889. Yes. For companies organized before 1886.	Yes.	"	"
Kansas ²	Yes. Only from banks, savings banks, trust co's, public officers or boards.	Yes. '01, ch. 407.	"	"
Kentucky	Yes. Statutes '94, §606. May engage in banking in counties under 100,000. '97, ch. 14.	Yes. Statutes '94, §612.	"	"
Louisiana ²	Yes. R. L. '97, §277.	Yes.	There is no provision in La. for trust co's separate from banks. R. L. '97, §277.	"
Maine	Yes. R. S. '83, ch. 47, § 84.	Yes.	Not without consent of Legislature, '01, ch. 196.	"
Maryland	Governed by charter.		No provisions.	"
Massachusetts....	Yes. Governed by charter.	Yes.	"	"
Michigan	No. C. L. '97, §6164.	Yes. C. L. '97, §6164.	"	"
Minnesota	Shall not engage in banking. S. '94, §2851.	No.	"	"

¹"To loan money on real or personal securities," "buy and sell stocks, bills of exchange, bonds, mortgages and other securities" means discount paper.—57 S. W. 936; Sup. Ct. of Ark., June 16, 1900.

²No trust companies in State.

³See Schedule V.

ATES AND TORIES.	SCHEDULE II.—Cont'd.		SCHEDULE III.—Cont'd.	SCHEDULE IV.—Cont'd.
	Banking privileges of trust companies.	Receive demand deposits.	May trust companies conduct branches.	May bank and trust companies occupy same office.
ppi	Yes. '97, ch. 33.	Yes.	No provisions.	No provisions.
i ¹	Yes. R. S. '99, §1427.	No. R. S. '99, §1427.	No.	"
a	Yes. Civil Code §604.	Yes.	No provisions.	No provisions.
ka.....	No trust company legislation.			
exico ²	Yes. C. L. '97, §262.	Yes. C. L. '97, §262.	No provisions.	No provisions.
mpshire..	Yes. Governed by charter.	Yes. No	No provisions on these subjects. trust companies in the state.	"
rsey	Yes. '99, ch. 174, §6, 18.	No. '99, ch. 174, §7.	"	Yes.
ork.....	Shall not engage in banking.			
Y. '93, ch. 696.	Yes.		If named in charter. '92, ch. 689, §156.	No provisions.
May do general banking.				
Carolina ..	Yes. 57 S.W. '96 §156.	Yes.	No provisions.	"
Dakota ² ...	No.	No	No.	Yes.
.....	No. '82, p. 101.	No.	No provisions.	No provisions.
ma	Yes. '01, pp. 89-91.	Yes.	"	"
.....	Yes.	Yes.	"	"
lylvania ³ ...	Yes. '95, ch. 286. 105 F. 491.	No.	"	Yes. Knox Hist. of banking, p. 464.
l Island.....	Shall not engage in banking.	Yes.	"	No provisions.
Carolina...	Governed by charter.	"	"	"
Dakota	Yes.	Yes.	"	"
see	Yes. Code '96, §2040.	Yes.	"	"
.....	Yes.	Yes.	"	"
" No corpora- ting or disco- unting privileges." R. S. '95, p. 164.	te body shall hereafter be created, renewed or extended with bank-			
.....	Yes. R. S. '98 §424.	Yes.	No provisions.	No provisions.
it	Yes. Governed by charter.	Yes.	No.	Yes. Statutes '94, § 4121.
a	Yes. Governed by charter.	Yes.	No provisions.	No provisions.
gton.....	Yes. Ballinger's Code '97, §4266.	Yes.	"	Trust co's have banking powers. Ballinger, §4266.
irginia.....	No legislation apart from banks.			
sin	No. Statutes '98, §1791g.	No.	"	No provisions.
ng ²	Shall not do a general bank-		"	"
	No. R. S. '99, §3137.	Yes. R. S. '99, §3132.	No.	No.

Missouri trust companies may receive demand deposits if they pay interest thereon. Such deposit may be paid on checks. Trust companies may not operate a general deposit account without interest. They may buy and sell bills of exchange. When statute enumerates powers of a company, no others should be assumed.—144 Mo. 562; Sup. Ct. of Mo., June 14, 1898.

In the absence of statutory provisions on the subject, a trust company authorized to receive deposit, has lawful authority to issue certificates of deposit therefor in the usual form."—1 U. S. Circuit Court, Pa., Dec. 26, 1900.

SCHEDULE V.

STATES AND TERRITORIES.	INCORPORATION OF TRUST COMPANIES.	
	How chartered.	General law: year first passage.
Alabama	No special provisions, but may be formed under general corporation law. Code '96, Vol. 1, § 1251.	1870. '70, p. 308.
Arkansas	No special provision, but may be formed under general corporation law. Sandels & Hill, Digest, '94, § 1326.	1869.
Arizona ¹	No special provisions, but may be formed under general law. R. S. '87, § 232.	1887.
California	General law. '91, ch. 264.	1891.
Colorado	General law. '91, p. 102.	1877. G. L. '77, p. 1.
Connecticut	Special act. G. S. 88, § 1944.	.....
Delaware	Special act.	.....
District of Columbia	General law. Code '01, §§ 715-21.	1890. U. S. Statu. L. Vol. 26, p. 625.
Florida	General law or by special act. The general law is for all corporations. It does not mention trust companies. R. S. '92, § 2119.	1868. '68, ch. 1639.
Georgia	General law. Code '95, Vol. 3, § 1903.	1891. '91, p. 172.
Idaho	General law. '01, p. 26.	1901. '01, p. 26.
Illinois	General law. '72, p. 296. This is the general corporation law. Trust companies may be formed under it. R. S. '99, p. 433.	1872. R. S. '99, p. 1.
Indiana	General law. '93, p. 344. Horner's Statutes, '97, § 3815a.	1893. '93, p. 344.
Indian Territory	No provision for chartering corporations. Am. Corporation Leg. Manual, 1901, p. 164.	.....
Iowa	General corporation law. Code '97, § 1889. § 1889 appears to have been added by revisors in 1897.	Prior to 1851.
Kansas ¹	General law. '01, ch. 407.	1901.
Kentucky	General law. Statutes '94, ch. 32.	1893.
Louisiana ¹	General law. R. S. '97, § 277.	1892. '92, ch. 95.
Maine	Special act.	.....
Maryland	Special act. '90, ch. 272.	1876. p. 292. Re 1890, ch. 272.
Massachusetts	Special act.	.....
Michigan	General law. '89, ch. 108.	1871.
Minnesota	General law. Statutes '94, § 2841.	1883. '83, ch. 107.
Mississippi	General law. '97, ch. 33.	1892. Code was a
Missouri	General law. R. S. '99, § 1424.	1885. '85, p. 103.
Montana	General law. Code '95, Vol. 1, p. 877.	1887. Code '95, 877, '93, p. 105. Com '87, p. 765.
Nebraska	Probably under general law, C. S. '97, § 1826. There is no provision concerning trust companies in Nebraska laws.	.....
New Mexico ¹	General law. '87, ch. 68, R. S. '97, § 260. This act is for savings banks and "trust associations." It does not mention usual trust company powers.	1887. '87, ch. 68.
Nevada ¹	Probably under general law. C. S. '00, § 866. No provisions concerning trust co's in Nevada laws.	1865.
New Hampshire	Special act. No gen'l incorporation law in State.	.....
New Jersey	General law. '93, p. 269; '99, ch. 174.	1885.
New York	General law. '87, ch. 546, also special charters.	1887.
North Carolina	Special act.	.....
North Dakota ¹	General law. '97, ch. 143.	1897.
Ohio	General law. '82, p. 101. General trust powers were conferred by act of 1882, but such companies are organized under general corporation law first passed 1852.	1882. '82, p. 101 S. '97, § 3821a.
Oklahoma	General law. Oklahoma S. '93, § 930. Special provisions in general law first made, '01, p. 87.	1893. Okl. S. '93.
Oregon	General incorporation law. No legislation concerning trust companies in State; Hill's laws '92, § 3217.	1862. Date gene poration law was Hill's L. '92, § 3217.
Pennsylvania	General law. '81, ch. 26.	1881.
Rhode Island	Special act. G. L. '96, ch. 176, § 10.	.....
South Carolina	General law. '96, ch. 45. No special trust company legislation in State. Some companies operate under banking and corporation laws.	1896.
South Dakota	General law. Ann. S. '99, § 3812.	1893. '93, ch. 42.
Tennessee	General law. '83, ch. 168, Code '96, § 2090.	1883.
Texas ²	General law. R. S. '95, § 642.	1891. '91, ch. 101
Utah	General law. '90, p. 107. R. S. '98, § 423.	1890. '90, p. 107.
Vermont	Special act.	.....
Virginia	Special act.	.....
Washington	General law. Ballinger's Codes '97, § 4266.	1886. '85-6, p. 84
West Virginia	General law. Code '99, p. 557.	1891. '91, ch. 28.
Wisconsin	General law. Statutes '98, § 1791 d.	1883. '83, ch. 294.
Wyoming	General law. R. S. '99, § 3128.	1888. '88, ch. 88.

SCHEDULE VI.

1 AND DRIES.	May trust companies incorporated elsewhere operate. ¹
.....	Yes. 37 F. 242. No restrictions in foreign corporation law. Code '96, vol. 1, §§1316-1324.
.....	Yes. No restrictions in law of foreign corporations. '99, ch. 19.
.....	Yes. No restrictions in law of foreign corporations. R. S. '87, §347, §352.
.....	Yes. No restrictions in law of foreign corporations. '99, p. 111.
.....	Yes. No restrictions in law of foreign corporations. '93, p. 88; '97, p. 157.
at.....	No foreign trust companies in state, but no restrictions in law of foreign corporations. '95, p. 629. May not do banking business.
lumbia	Yes. No restrictions in law of foreign corporations. '93, ch. 703; '97, ch. 513.
.....	Yes. Code '01, §725.
.....	Yes. No restrictions on foreign trust companies. 37 Fla. 64.
.....	Yes. No restriction in law of foreign corporations. Code '95, vol. 3, §§1846-1850.
.....	No special provision. No restrictions in law of foreign corporations. R. S. '87, §2653.
.....	Yes. '99, p. 118. 68 Ill. App. 666. W. Va. '95, corp. p. 51. 68 F. 412.
.....	Yes. No restrictions in law of foreign corporations. Ann. S. '97, §3022.
territory.	Yes. No laws concerning corporations. Am. Corporation Legal Manual '01, p. 165.
.....	Yes except for banking. Code '97, §1367. No special provision, but no restrictions on foreign corporations.
.....	Yes. 35 Kan. 236.
.....	Yes. No restrictions in law of foreign corporations. Statutes '94, §202.
.....	No.
.....	Yes. '99, ch. 123. No restrictions in law of foreign corporations.
hets.	Yes. '92, ch. 109.
.....	No.
.....	Yes. No restrictions in law of foreign corporations.
.....	Yes. No restrictions in law of foreign corporations. Code '92, §849.
.....	Yes. No restrictions in law of foreign corporations. '91, p. 75, 101.
.....	Yes. No restrictions. '01, p. 150. Civil Code, §§1030-1038.
.....	Yes. No restrictions in law of foreign corporations. C. S. 97, §1946.
co ²	Yes. 43 Pac. 701. No restrictions in law of foreign corporations. C. L. '97, §§445, 446.
.....	Yes. No restrictions in law of foreign corporations. C. L. '00, §§897-901.
psshire.	No. Trust companies must be specially chartered.
.....	Yes. '90, p. 427.
.....	No. May not act as trustee nor engage in banking. '92, ch. 689, §§88.
Colina	Yes. No law regulating foreign corporations except transportation companies.
Am. Corp. Legal Manual, '01, p. 431.	
Dota ² ...	Yes. No restriction in law of foreign corporations. Code '99, §326.
.....	No.
.....	Yes. No restrictions. S. '93, §1167, §1169.
.....	Yes. No restrictions. Hill's L. '92, p. 1449.
ylvania	Yes. W. Va. '01, p. 552; '74, ch. 108. Pepper & Lewis, p. 2175. (No foreign companies in state.)
Ind.	Yes. G. L. ch. 253, §37. W. Va. '97, corp. p. 103.
Colina	Yes. R. S. '93, §1472.
Dota	Yes. Ann. S. '99, §4204. '95, ch. 45. (May act as trustee.)
.....	Yes. Code '96, §2545. No restrictions.
.....	Yes. No restrictions. R. S. '95, §745-9.
.....	Yes. No restrictions. R. S. '98, §351.
.....	No.
.....	Yes. '94, ch. 661.
.....	Yes. No restrictions in law of foreign corporations. Ballinger's Code '97, §§4291-4294.
Vilinia	Yes. No restrictions in law of foreign corporations. Code '99, ch. 54, §30.
.....	Yes. No restrictions in law of foreign corporations. Statutes '98, §1770.
min	Yes. No restrictions in law of foreign corporations. R. S. '99, §§3265-3269.

SCHEDULE VII.

STATES AND TERRITORIES.	REPORTS. (State regulation of trust companies.)		
	Required.	To whom made.	Year of 1st of law.
Alabama.....	No.	No trust company legislation.	.....
Arkansas.....	No.	No trust company legislation.	.....
Arizona ¹	Yes. R. S. '01 §§130-1.	Territorial auditor. Applies to banking companies.	1901.
California.....	Yes, twice yearly.	Bank commissioners, '91, ch. 264, §12.	1891.
Colorado.....	Yes, not less than three a year.	State treasurer, '91, p. 102, §11.	1891.
Connecticut.....	Yes, quarterly.	Bank commissioners, G. S. '88, §1787.	1872. '72, C.
Delaware.....	No. Charters require Savings banks must Yes.	No trust company legislation. annual publication in some cases. also publish report. R. Laws, '93, p. 570. U. S. comptroller, Code '01, §720, §730.	.....
Dist. of Columbia.....			1890. U. S. at Large, V. 625.
Florida.....	Yes, if doing banking business.	Comptroller, R. S. '92, § 2190. No trust company legislation.	1889. '89, C.
Georgia.....	Yes. If doing banking business, '98, p. 78, §12.	Bank examiner, who is State treasurer, Code '95, Vol. 3, § 1912.	1894. '94, 1.
Idaho.....	No.	.....	.....
Illinois.....	Yes.	Auditor of public accounts, '87, p. 144, R. S. '99, p. 470.	1887.
Indiana.....	Yes.	Auditor of State. Horner's Statutes, '97, § 3815 n.	1893. '93, 1.
Indian Territory.....	No.	No trust company legislation.	.....
Iowa.....	Yes, quarterly.	Auditor of State. Code '97, § 1872; applies to banks. Code '97, § 1889; applies banking law to trust companies.	1873. '73, C.
Kansas ¹	Yes, quarterly.	Bank Commissioner, '01, ch. 407, § 13.	1901. '01, C.
Kentucky.....	Yes.	Auditor of public accounts. Statutes '94, § 4078, § 4092, p. 615.	.....
Louisiana ¹	Yes, quarterly.	Bank examiner. '98, p. 449. Except in special cases the bank examiner does not examine banks, other than by getting reports.	1877. '77, 1.
Maine.....	Yes, twice yearly.	Bank examiner, '93, ch. 258; '95, ch. 130.	1893.
Maryland.....	Yes, twice yearly.	State treasurer, '92, ch. 109.	1892. '92, C.
Massachusetts.....	Yes.	Commissioners of savings banks. '88, ch. 413.	1888.
Michigan.....	Yes, quarterly.	Commissioner of banking, C. L. '97, § 6170.	1889. '89, C.
Minnesota.....	Yes.	Public Examiner. Statutes, '94, §2852.	1883. '83, C.
Mississippi.....	Yes, twice yearly.	No one. Must be published.	1897. '97, C.
Missouri.....	Yes, when required by Secretary of State, at least twice yearly.	Secretary of State. R. S. '99, § 1284, § 1287.	1895. '95, C.

¹ No trust companies in State.

SCHEDULE VII.—Continued.

ATES ND TORIES.	REPORTS. (State regulation of trust companies.)		
	Required.	To whom made.	Year of 1st passage of law.
.....	Yes, quarterly.	State auditor. Civil Code, § 607.	1887. C. S. '87, p. 765.
.....	No.	No provision.	.....
.....	Yes, twice yearly.	No trust company legislation. Secretary of the territory. C. L. '97, § 269.	1887. '87, ch. 68, § 8.
.....	No.	No provision.	.....
.....	Yes.	No trust company legislation. Board of bank commissioners. P. S. '01, p. 536.	1895. '95, ch. 105.
.....	Yes.	Commissioner of banking, '99, ch. 174. Formerly to secretary of State. '89, p. 368.	1889.
.....	Yes.	Sup't. of banking, '74, ch. 324.	1874.
.....	Yes, if doing banking business five times a year on call.	Corporation commission, '99, ch. 164.	1887. '87, ch. 175.
.....	Yes.	State examiner, Code '99, §3258n.	1897. '97, ch. 143.
.....	Yes.	Auditor of State. '77, p. 72, Bates' S. '97, § 3821 b.	1877.
.....	Yes, when required.	Secretary of territory. '01, p. 95.	1901.
.....	No.	No trust company legislation.	.....
.....	Yes.	Superintendent of banking. '91, ch. 190.	1891.
.....	Yes.	State auditor. Gen'l Laws, '96, p. 555.	1877.
.....	Yes. In form of quarterly statements to be published in newspaper. R. S. '93, §1464.	.....	1874. '74, ch. 432.
.....	Yes.	Secretary of State. Ann. S. '99, §4205.	1895. '95, ch. 45.
.....	No.	Statement of condition to be published in newspaper every six months. '83, ch. 168.	1883.
.....	Yes.	Commissioner of insurance, R. S. '95, § 642, p. 164.	1891. '91, ch. 101.
.....	Yes, quarterly.	Secretary of State, R. S. '98, §430, §388.	1890. '90, p. 107.
.....	Yes.	Inspector of finance. Statutes, '94, §4081.	1878.
.....	Yes.	Auditor of public accounts. '94, ch. 661, § 16.	1894.
.....	Yes.	State Auditor. Ballinger's Codes '97, §4266.	1886. '85-6, p. 84.
.....	Yes, quarterly.	Commissioner of banking. '01, ch. 83, § 81, ¶ 8; '01, ch. 85, § 1; '01, ch. 85. §81, ¶15.	1901. '01, ch. 83, § 81,
.....	Yes.	Secretary of State. Statutes '98, §1791 i.	1885. '85, ch. 33.
.....	No.	.....	.....

trust companies in State.

² Schedule XIX.

SCHEDULE VIII.

STATES AND TERRITORIES.	EXAMINATIONS. (State regulation of trust companies.)		
	Required.	Made by.	Year of 1st of la
Alabama	No.	No trust company legislation.	.....
Arkansas	No.	"	.....
Arizona ¹	Yes. R. S. '01, §§130-1.	Territorial auditor. Applies to banking companies.	1901.
California	Yes.	Bank commissioners. '91, ch. 264, §14.	1891.
Colorado	No.	.....	.....
Connecticut	Yes, twice yearly.	Bank commissioners. G. S. '88, §1827.	1872. '72
Delaware	No.	.....	.....
Dist. of Columbia ..	Yes.	U. S. Comptroller. Code '01, §720.	1890. U. S at Large, vo
Florida	Yes, if doing banking business.	Comptroller at discretion. Applies to "banking companies." R. S. '92, §2191.	1889. '89,
Georgia	Yes, if doing banking business. '98, p. 79, §12.	Bank examiner. Code '95, vol. 3, §1919.	1889. '89,
Idaho	No.	.....	.....
Illinois	Yes.	Auditor of public accounts. '87, p. 144. R. S. '99, p. 470.	1887.
Indiana	Yes.	Auditor of state. '93, p. 344. Horner's Statutes, '97, §38150.	1893. '93,
Indian Territory	No.	No trust company legislation.	.....
Iowa	Yes. Code '97, §1873.	Auditor of state in his discretion may appoint examiners. '90, ch. 50, applies to banks. Code '97, §1889, applies banking law to trust companies.	1873. '73,
Kansas ¹	Yes.	Bank commissioner. '01, ch. 407, §13.	1901.
Kentucky	No.	.....	.....
Louisiana ¹	Yes, in New Orleans parish.	Committee of Legislature every two years. R. S. '97, §303.	1877. '77,
Maine	Yes, twice yearly.	Bank examiner. '97, ch. 218. R. S. '83, ch. 47, §119.	1897. '97,
Maryland	Yes.	State treasurer. '92, ch. 109, §85b.	1892. '92,
Massachusetts	Yes.	Commissioners of savings banks. '88, ch. 413.	1888.
Michigan	Yes.	Commissioner of banking. C. L. '97, §§6124-6128, 6172.	1887. '87,
Minnesota	Yes, twice yearly.	Public examiner. Statutes '94, §2853.	1883. '83,
Mississippi	No.	.....	.....
Missouri	Yes.	Secretary of state. R. S. '99, §1304.	1895. '95,

¹ No trust companies in State.

SCHEDULE VIII.—Continued.

ATES AND RITORIES.	EXAMINATIONS. (State regulations of trust companies.)		
	Required.	Made by.	Year of 1st passage of law.
ana	Yes, at discretion of state auditor.	State auditor or some one designated by him. Civil Code §607.	1887, C. S. '87, p. 765.
aska	No provision.	No trust company legislation.	.....
Mexico ¹	No, but may be made at discretion of secretary of territory.	Secretary of territory. C. L. '97, §28.	1887. '87, ch. 68.
da ¹	No.	No trust company legislation.	.....
Hampshire...	Yes, twice a year.	Board of bank commissioners, three members. '89, ch. 55.	1889.
Jersey	No.	Commissioner of banking. '99 ch. 174.	1889.
York	Yes.	Superintendent of banking. '74, ch. 324.	1874.
n Carolina.....	Yes, if doing banking business.	No trust company legislation. Examiner appointed by state treasurer. '91, ch. 155.	1891.
h Dakota ¹	Yes, twice yearly.	State examiner. Code '99, §3258e.	1897. '97, ch. 143.
.....	No, may be made at any time.	Examiner appointed by auditor of state. Bates' S. '97, §3821d.	.....
homa	Yes.	Bank commissioner. '01, p. 101.	1901.
on	No.	No trust company legislation.	.....
sylvania	Yes.	Superintendent of banking. '91, ch. 190.	1891.
le Island.....	No.	.....	.....
h Carolina.....	Yes.	Bank examiner. '96, ch. 48.	1896.
h Dakota	No.	.....	.....
lessee	No.	.....	.....
as ²	No, but may be made at any time.	Commissioner of insurance. R. S. '95, §642, ¶37.	1891. '91, ch. 101.
.....	Yes.	Bank examiner. R. S. '98, §2441.	1898. R. S. '98, §2441. This § was added by revisors and adopted by legislature.
mont	Yes.	Inspector of finance. Statutes '94, §4120.	1874.
inia	No, but may be made at any time.	Auditor of public accounts. '94, ch. 661, §18.	1894.
hington	No.	.....	.....
st Virginia.....	Yes.	Bank commissioner. '91, ch. 26. Code '99, p. 598; '01, ch. '85, §7.	1891. '91, ch. 26.
consin	Yes.	Bank examiner. '95, ch. 291.	1895.
oming ¹	Yes.	State examiner. R. S. '99, §129.	1891. '91, ch. 84.

¹ No trust companies in State.² Schedule XIX.

SCHEDULE IX.

STATES AND TERRITORIES.	RECEIVERSHIP. (State regulation of trust companies.)			
	May state officials apply for receiver?	Year of first passage.	May state officials take possession pending appointment of receiver?	Year of passage of law
Alabama.....	No provision. No trust company legislation.	.....	No.	...
Arkansas.....	" " "	.....	No.	...
Arizona ¹.....	" " "	.....	No.	...
California.....	Yes. Attorney general on information of bank commissioners, '91, ch. 264, § 17.	1891.	No.	...
Colorado.....	No.	.....	No.	...
Connecticut.....	Yes. G. S. '88, § 1830.	1879. '79, ch. 8.	No. But bank or trust company may be restrained from paying out on application of commissioners to court, '97, ch. 3.	1897.
Delaware.....	No. No trust company legislation.	.....	No.	...
Dist. of Columbia.	Yes. U. S. District Attorney, Code '01, § 786. U. S. Comptroller. U. S. Statutes at L. Vol. 26, p. 625, § 6.	1890.	Yes. Comptroller, Code, '01, § 720.	1890. U. S. Statutes Vol. 26, § 6.
Florida.....	No trust company legislation. No provision as to trust companies. Comptroller may apply in case of banking companies, R. S. '92, § 2192.	1889. '89, ch. 3864. § 37.	No.	...
Georgia.....	Yes. If doing banking business, '98, p. 79, § 12. Bank examiner reports to governor who directs attorney general to begin proceedings, '95, p. 58.	1895. '95, p. 58.	No.	...
Idaho.....	No provision.	.....	No.	...
Illinois.....	Yes. '87, p. 144, § 13; R. S. '99, p. 470.	1887.	No. '87, p. 144, § 13.	...
Indiana.....	Yes. '93, p. 344.	1893.	No. '93, p. 344.	...
Indian Territory.	No. No trust company legislation	.....	No.	...
Iowa.....	Yes. By attorney general on information of state auditor. Code '97, § 1877, applies to banks. Code '97, § 1889, applies banking law to trust companies.	1873. '73, ch. 60 § 25.	No.	...
Kansas ¹	Yes. Attorney general on information of bank commissioner. G. S. '99, §§ 418, 434, '01, ch. 407, § 15.	1901. '01, ch. 407.	Yes.	1901. '01 407, § 15.
Kentucky.....	Yes. Attorney general, '94, ch. 35. Secretary of state, statutes, '94, § 616.	1894.	No.	...
Louisiana ¹	Yes. Auditor of public accounts may act. R. L. '97, §§ 284, 293.	1855. '55, ch. 166.	No.	...
Maine.....	Yes. '97, ch. 218, R. S. '83, ch. 47, § 121.	1897.	No. R. S. '83, ch. 47, § 121.	...
Maryland.....	Yes. Attorney General on information, '92, ch. 109.	1892. '92, ch. 109.	No.	...
Massachusetts ..	Yes. '88, ch. 413.	1888. '88, ch. 413.	No. Injunction may be granted, '88, ch. 413.	1888.
Michigan.....	Yes. C. L. '97, § 6184. Attorney general on information of bank commissioner.	1887. '87, ch. 205.	Yes.	...
Minnesota.....	Yes. Statutes '94, § 2854. Attorney general on information of state auditor or public examiner.	1883. '83, ch. 107.	Yes.	1899. '99 200, § 14.
Mississippi.....	No provision.	No.	No.	...
Missouri.....	Yes. R. S. '99, § 1305.	1897. '97, p. 83.	Yes. '97, p. 83.	1897. R. § 1305.

¹ No trust companies in State.

SCHEDULE IX.—Continued.

RECEIVERSHIP. (State regulation of trust companies.)				
STATES AND TERRITORIES	May state officials apply for receiver?	Year of first passage.	May state officials take possession pending appointment of receiver?	Year of first passage of law.
Alabama...	No provision.	.....	No.	....
Alaska ¹	No provision. No trust company legislation.	.....	No.	....
Arizona...	Yes. Attorney General on information of Secretary of territory, C. L. '97, § 280.	1887. '87, ch. 68, § 20.	No.	....
Arkansas...	No provision. No trust company legislation.	.....	No.	....
Arkansas...	Yes. R. S. '01, p. 537.	1889. '89, ch. 55. The law for banks was passed in 1837. In 1889 trust companies were brought under its provisions.	No.	....
Arkansas...	Yes. '99, ch. 174, § 24.	1889.	Yes. '99, ch. 174, § 22.	1889.
Arkansas...	Yes. '82, ch. 409, § 223.	1882.	No. '93, ch. 333, § 18.	....
Arkansas...	Yes. '93, ch. 478. Applies to banking corporations. No trust company legislation.	1891. '91, ch. 155.	No.	....
Arkansas...	Yes. Attorney general on information of state examiner. Code, '99, § 3258 p.	1897. '97, ch. 143.	No.	....
Arkansas...	No.	.....	No.	....
Arkansas...	Yes. Bank commissioner, '01, p. 101.	1901.	Yes. Bank commissioner, '01, p. 101.	1901.
Arkansas...	No provision. No trust company legislation.	.....	No.	....
Arkansas...	Yes. '91, ch. 190.	1891.	Yes. '91, ch. 190, § 9.	1891.
Arkansas...	No provision.	.....	No.	....
Arkansas...	Yes. '96 ch. 48. No special trust company legislation in state. Such companies operate under banking and corporation laws.	.....	No.	....
Arkansas...	No provision.	.....	No.	....
Arkansas...	Governor and attorney general of state may direct attorney general of district to apply, Code '96, § 6168.	1846.	No. No. Code '96, §§ 5165-5187.	....
Arkansas...	No provision.	.....	No.	....
Arkansas...	Yes. Attorney general on information of secretary of state, R. S. '98, § 390.	1890. '90, ch. 70. Examiner may also apply for receiver, '90, ch. 70.	No.	....
Arkansas...	Yes. '84, ch. 41, § 42.	1884.	Yes. If court orders. '84, ch. 41, § 42.	1884.
Arkansas...	No.	.....	No.	....
Arkansas...	No.	.....	No.	....
Arkansas...	Yes. Bank examiner may report insolvent bank to board of public works who may revoke charter, '91, ch. 26. Bank examiner may apply for receiver with consent of governor and attorney general, '01, ch. 83, § 81; '01, ch. 85, § 1.	1891. 1901.	No.	....
Arkansas...	No.	.....	No.	....
Arkansas...	Yes. Governor on information of state examiner, R. S. '99, § 130.	1891. '91, ch. 84	Yes.	....

STATES AND TERRITORIES.	SCHEDULE X.		SCHEDULE XI.		
	Securities required of trust companies.		Double liability of stockholders.		
	Deposit of funds with state officials.	Banks.	Year of 1st passage of law.	Trust companies.	
Alabama	No trust co. legislation.	No.	....	No trust co.	
Arizona ¹	" " "	No.	...	" "	
Arkansas	" " "	No.	....	" "
California	\$200,000 with treasurer, '91, ch. 264.	No. Pro rata liability.	Const. art. 12, §3.	No. Pro rata liability.	
Colorado	No.	Yes. Mills' S. p. 650.	1877	No.	
Connecticut	No.	No.	....	No.	
Delaware	Banks and trust companies are specially chartered.				
Dist. of Columbia.	Yes. Code §746.	Yes. C. L. '94, ch. 15, §162.	1876	Yes. Code §734.	
Florida	No trust co. legislation.	Yes. R. S. '92, §2172.	1889	No trust co.	
Georgia	No.	Yes. '91, p.175.	1891	Yes. '98, p.81. Some are specially chartered.	
Iowa	No.	Yes. '74, ch. 60.	1874	Yes. Code, '97, §1889.	
Idaho	No.	No.	....	No.	
Illinois	(\$200,000 in cities of 100,000; \$50,000 elsewhere, R. S. '99, p. 470.)	Yes. Const. Art. 11, §6.	1870	Banks may trust powers.	
Indian Territory .	No legislation on banks or trust companies.				
Indiana....	No.	Yes. Const. art. 11.	1851	Yes. '93, p.344	
Kansas ¹	No.	Yes. '91, ch. 43.	1891	Yes. '01, ch.407	
Kentucky.....	No.	Yes. '93, ch. 171.	1893	Yes. '93, ch. 171.	
Louisiana ¹	Court may require.	No.	....	No.	
Massachusetts	No.	No state banks in state.		Yes. '88, ch. 413.	
Maryland.....	15% of capital with treasurer. The deposit to be not less than 10% of value of capital, and \$30,000 in amount, '92, ch. 109.	Yes. '70, ch. 268.	{ Const. 1851 " 1867	Yes. '92, ch. 109.	
Maine	No.	Yes. '83, ch. 47.	1841	Yes. '99, ch. 68. Liability usually fixed by charter.	
Michigan	50% of capital with treasurer C. L. '97, §6157.	Yes. '87, ch. 205.	1887	Yes. '89, ch. 108.	
Minnesota.....	\$100,000 with auditor, S. '94, §2845.	Yes. S. '94, §2501.	1866	Yes. const. X. §3.	
Mississippi.....	No.	No.	....	No.	
Missouri	\$200,000 with Supt. of Insurance, '91, p. 99.	No.	....	No.	

¹ No trust companies in State.

TERRITORIES.	SCHEDULE X.—Cont.		SCHEDULE XI.—Cont.		
	Securities required of trust companies.		Double liability of stockholders.		
	Deposit of funds with State officials.	Banks.	Year of 1st passage of law.	Trust companies.	Year of 1st passage of law.
na	No.	No.	....	No.	....
ka	No.	Yes.	Const. 1875, art. 2, §7.	No trust co.	legislation
a ¹	No.	No individual liability exists.	Const. 1864, art. 8, §3.	No trust co.	legislation
Carolina ...	No.	No.	....	No.	....
Dakota ¹	\$50,000 with state auditor. Code, §3258.	Yes. '90, ch. 23	1890	No.	....
Iampshire..	No.	No.	....	No.	....
ersey	Yes. { Trust liabilities not to exceed 10 times fund deposited, '99, ch. 174.	No.	..	No.	....
lexico ¹ ...	No.	No.	....	No.	....
ork	Court may require, '98, ch. '98.	Yes. '82, ch. 409.	1882	Yes. '87, ch. 546.	1887
..... ..	Probate court may require. Bates, §3821d	Yes. Const. art. 13.	1851	Yes. '82, p. 101.	1882
u	No trust co. legislation.	No.	....	No trust co.	legislation
oma	\$200,000 with treas., '01, p. 99.	Yes.	....	No.	....
lyvania.....	No.	Yes. Pepper & Lewis, p. 263.	1876	No.	....
e Island	No.	Yes. G. L. '96, p. 541.	1872	Fixed by charter.	
Carolina ...	No.	Yes. Const. art. 9, §18.	1895	Yes, if engaged in banking.	
Dakota.....	No.	Yes. '91, ch. 27.	1891	No.	....
essee.....	No.	No.	...	No.	....
s ²	\$50,000 with state treasurer, R. S. '95, §642.	No.	....	No.	....
.....	No. R. S. '98, §§423-30.	Yes. Const. '95, art. 12, §18.	1888	No.	....
nia.....	5% of capital with treasurer, '94, ch. 661.	No.	....	No.	....
ont.....	No.	No.	....	Yes. '84, ch. 41.	1884
Virginia	20% of capital. '01, ch. 85.	Yes. '01, ch. 83	1881	Yes. '01, ch. 85.	1891
ington.....	No.	Yes. '86, p. 85.	1886	Yes. '86, p. 85.	1886
onsin.....	50% of capital. S. '98, §1791d.	Yes. S. '98, p. 1537.	1852	No.	...
ming ¹	No. '88, ch. '88.	Yes. '88, ch. 88	1888	Yes. '88, ch. 88.	1888

SCHEDULE XII.

STATES AND TERRITORIES.	A.		B.	
	Deposits: proportionate reserve required.			
	Banks.	Year of passage of law.	Trust co's.	Year of passage of
Alabama.....	None.	.....	None.	.....
Arkansas.....	None.	.....	None.	.....
Arizona ¹	15%	R. S. '01, §138.	None.	.....
California.....	None.	.....	None.	.....
Colorado.....	20%	1877. G. L. '77, p. 165. Mills S. §526.	None.	.....
Connecticut.....	15%	1901. '01, ch. 143.	15%	1901. '01, ch. 143.
Delaware.....	None.	.....	None.	.....
Dist. of Columbia.....	25%	1872. Code '01, §713. U. S. Revised S. '74, §5191.	None.	.....
Florida.....	20%	1889. '89, ch. 3864; R. S. '92, §2182.	None.	.....
Georgia.....	25%	1891. '90-1, p. 171. Code '95, vol. 3, §1915.	25%	1898. if doing banking busi '98, p. 78. Code '95, vol. 3, §1915.
Idaho.....	None.	.....	None.	.....
Illinois.....	None.	.....	None.	.....
Indiana.....	None.	.....	None.	.....
Indian Territory.....	None.	.....	None.	.....
Iowa.....	15%	1897. for savings banks in cities under 3,000. 20% elsewhere. 10% for state banks in cities un- der 3,000. 15% others. Code '97, §1867.	None.	.....
Kansas ¹	20%	1897. in cities under 5,000.	25%	1901.
	25%	in other cities. '97, ch. 47; G. S. '99, §418.	10%	of demand. of time. '01, ch. 407.
Kentucky.....	15%	1894.	None.	.....
	25%	in cities over 50,000. '94, ch. 35.		
Louisiana ¹	25%	1900. of demand deposits. '00, ch. 116.	25%	1900. of demand deposits. '00, ch. 116.
Maine.....	15%	1893. of demand deposits, or those requiring 10 days notice. '93, ch. 281.	15%	1893. of demand deposits or requiring 10 days notice. '93, ch. 281.
Maryland.....	5%	savings banks.	None.	.....
Massachusetts.....	None. (Savings banks.)	.....	15%	1888. of demand deposits. '88, ch. 413.
Michigan.....	15%	1887.	20%	1891. of obligations and mon- '91, ch. 126; C. L. '97, §
Minnesota.....	20%	1895. of immediate liabilities. '95, ch. 145.	None.	.....

¹ No trust companies in State.

SCHEDULE XII.—Continued.

ATES AND RITORIES.	A.		B.	
	Deposits: proportionate reserve required.			
	Banks.	Year of passage of law.	Trust co's.	Year of passage of law.
ppi.....	None.	.....	None.	.....
i.....	15%	1899. R. S. '99, §§1280, 1304.	15%	1899. R. S. '99, §§1280, 1304.
.....	20%	1887. of immediate liabilities. Civil Code §584. C. S. '87, p. 754.	None.	.....
a.....	15%	1895.	None.	.....
.....	20%	in cities of 25,000. '95, ch. 17.	None.	.....
.....	5%	for savings banks with no capital. '69, ch. 93, §11.	None.	.....
mpshire.....	None.	.....	None.	.....
rsey.....	15%	1899. of liabilities. '99, ch. 173, §20.	15%	1899. of liabilities. '99, ch. 174, §20.
exico ¹	None.	.....	None.	.....
ork.....	15%	1895. in cities of 800,000. elsewhere. '95, ch. 929, §44.	None.	.....
Carolina.....	None.	.....	None.	.....
Dakota ¹	20%	1893. '93, ch. 27, §20. Code 99, §3245.	None.	.....
.....	20%	1879. '79, p. 73; Bates, p. 1993.	15%	1882. of demand deposits or those payable in ten days. '82, p. 101; Bates 3821b.
ma.....	15%	1897. '97, ch. 4, §23.	None.	.....
.....	None.	.....	None.	.....
lvania.....	None.	.....	None.	.....
l Island.....	None.	.....	None.	.....
Carolina.....	None.	.....	None.	.....
Dakota.....	20%	1891. '91, ch. 27.	None.	.....
nsee.....	None.	.....	None.	.....
.....	None.	.....	None.	.....
.....	20%	1878. in cities of 25,000. elsewhere. R. S. '98, §378; U. S. R. S. 1878, §5191.	20%	1890. in cities of 25,000. elsewhere. This applies to trust com- panies engaged in banking. R. S. '98, §424.
nt.....	None.	.....	None.	.....
ia.....	None.	.....	None.	.....
lington.....	None.	.....	None.	.....
irginia.....	15%	1901. '01, ch. 83, §80.	15%	1901. '01, ch. 85, §1.
sin.....	None.	.....	None.	.....
eng ¹	None.	.....	None.	.....

SCHEDULE XIII A.

STATES AND TERRITORIES.	LOANS (Legal restrictions).
	Banks.
Alabama.....	None.
Arizona.....	None.
Arkansas.....	None.
California.....	None.
Colorado.....	Not over 25% of paid in capital in one loan. Mills S. ch. 12, §2.
Connecticut.....	Not over 20% of paid in capital, surplus and undivided profits. '01, ch. 143.
Delaware.....	No general law in state. Banks and trust companies are specially chartered.
Dist. of Columbia.....	National banks. Not over 10% of paid in capital in one loan.
Florida.....	Not on capital stock. R. S. §2183.
Georgia.....	Not over 10% of capital and surplus in one loan. '98, p. 48. Total loans to officers exceed 25% of capital. Code §1948. Not to loan on officer's indorsement. Code §1949.
Iowa.....	Not over 20% of paid in capital to one person; discount of bills of exchange and commercial paper not counted as loan. Code '97, §1870.
Idaho.....	None.
Illinois.....	Not over 1/10 paid in capital in one loan; discount of bills of exchange and commercial paper not counted as loan. R. S. '99, p. 200.
Indian Territory.....	None.
Indiana.....	None.
Kansas.....	Not over 15% of paid in capital and surplus in one loan; discount of bills of exchange and commercial paper not counted as loan. G. S. '01, §419.
Kentucky.....	Not over 20% of paid in capital and surplus in one loan; no person to become to bank for more than 30% capital and surplus. S. '94, §583.
Louisiana.....	Not to loan on capital stock. R. S. '97, §281.
Massachusetts.....	Not to loan to officers. '94, ch. 317, §22. (Savings banks.)
Maryland.....	To states not to exceed \$50,000. P. G. L. p. 107.
Maine.....	Not to loan to officers. R. S. '83, ch. 47, §104.
Michigan.....	Not over 1/10 paid in capital in one loan, 1/5 by 2/3 vote of directors; bills of exchange and commercial paper discounted not counted as loan. Not over 50% of capital loaned on real estate, 2/3 vote of directors necessary. C. L. '97, §§6112, 6142. Not on capital stock. '99, ch. 265.
Minnesota.....	Not over 15% of paid in capital and surplus in one loan. S. §2428.
Mississippi.....	Not over 1/5 capital in one loan. Code §851.
Missouri.....	Not over 25% of paid in capital and surplus in one loan if surplus is 50% of capital. R. S. '99, §1292. Discount of bills of exchange, and commercial paper not counted on collateral.
Montana.....	Not over 15% of paid in capital and surplus in one loan. C. C. §583. Discount of commercial paper and bills of exchange not counted as loan.
Nebraska.....	Not over 20% of paid in capital in one loan nor total of 50% of capital to stockholders collectively. Bills of exchange, and commercial paper discounted not counted as loans. C. S. '97, §642.
Nevada.....	None.
North Carolina.....	None.
North Dakota.....	Not to loan on or hold own stock. R. C. '99, §§3244-7. Not over 15% of capital in one loan. Bills of exchange, and commercial paper discounted and on collateral not counted as loans. R. C. '99, §3247.
New Hampshire.....	Not over 10% of deposits or capital stock in one loan. P. S. '01, p. 541.
New Jersey.....	Not over 10% of paid in capital and surplus in one loan; discount of commercial paper and bills of exchange not counted as loans. Not to loan on or buy its stock. '99, ch. 173.
New Mexico.....	Not to loan on or buy its own stock. C. L. '97, §244.
New York.....	Not over 1/5 paid in capital and surplus in one loan; discount of bills of exchange and commercial paper and loans on collateral not counted as loans; not to loan shares. Birdseye S. p. 204.
Ohio.....	Not over 1/10 paid in capital in one loan; discount of bills of exchange, and commercial paper not counted as loans. Bates' S. §§3821-80. Not to loan on or own its capital stock. Bates' S. §§3821-71.
Oklahoma.....	Not over 20% of paid in capital and surplus in one loan; discount of bills of exchange and commercial paper not counted as loan. Not over 50% of capital to be loaned to stockholders. '99, ch. 4. Not to loan on its own stock.
Oregon.....	None.
Pennsylvania.....	Not over 10% of paid in capital and surplus to director. Loans to officers exceed 25% of capital paid in. '01, ch. 268. Not to loan on capital. P. & L. Digest.
Rhode Island.....	Fixed by charter.
South Carolina.....	Not over 1/10 paid in capital and surplus in one loan. '97, ch. 291.
South Dakota.....	Not over 15% of capital in one loan; discount of bills of exchange, and commercial paper not counted as loans. R. S. '99, §4358. Not to loan on shares of its stock. '99, §4358. Real estate loans not to exceed 60% of capital. R. S. '99, §4340.
Tennessee.....	None.
Texas ¹	None.
Utah.....	Not over 15% of paid in capital and surplus to one person nor 10% to officer. R. S. §§379, 380. Discount of bills of exchange and commercial paper not counted as loans.
Vermont.....	None.
Virginia.....	Not over 1/10 paid in capital in one loan; discount of bills of exchange and commercial paper not counted as loans. Code §1168. Not to loan on shares of its stock. Code §1163.
West Virginia.....	Not over 50% of capital, surplus and undivided profits in one loan; discount of bills of exchange and commercial paper not counted as loans. Not to loan on its own stock. '01, ch. 53, §79.
Washington.....	None.
Wisconsin.....	None.
Wyoming.....	Not over 1/7 of paid in capital in one loan; discount of bills of exchange, and commercial paper not counted as loans; 1/10 if capital exceeds \$40,000. R. S. '99, §3089. Not to loan on its own stock. R. S. '99, §3088.

SCHEDULE XIII B.

AND DRIES.	LOANS (Legal restrictions).
	Trust companies.
None.	
None.	
None.	
None.	
ut.	Not to stockholders. Mills S. §535.
olumbia	Same as banks. '01, ch. 143.
territory.	Banks and trust companies are specially chartered. No general law in State.
None.	
None.	
Same as banks. '98, p. 82.	
Same as banks. Code '97, §1889	
None.	
Same as banks; banks may acquire trust powers.	
None.	
Not to loan to directors. Horner's S. '01, §3815m.	
None.	
Not over 20% of paid in capital in one loan. S. '94, §610.	
Same as banks. R. S. '97, §281.	
Not to persons outside state, nor over 1/5 of paid in capital in one loan. '88, ch. 413. If capital is \$500,000, 1/5 capital paid in and surplus. Discount of bills of exchange and commercial paper not counted as loans. '01, ch. 255.	
Fixed by charter.	
Not to loan to officers without approval of directors: not to loan on capital stock. '01, ch. 196.	
None.	
Not to officers. S. '94, §2851.	
None.	
Must be on collateral. R. S. '99, §1430.	
None.	
Same as banks. P. S. p. 541.	
Not to loan on its own stock. Loans must be on collateral. '99, ch. 174.	
None.	
Same as banks; 1/10 of paid in capital may be loaned to officer. Birdseye, p. 248.	
Not over 1/10 paid in capital in one loan; none to officers or employees; must be on collateral. Bates' S. §3821a.	
None.	
None.	
Same as banks in regard to loans to officers. '01, ch. 268.	
Fixed by charter.	
Fixed by charter.	
None.	
None.	
None.	
Same as banks. R. S. '98, §424.	
Not over 5% of deposits or \$30,000 in one loan, nor over \$10,000 on personal security. S. '94, §4102. Not over 5% of paid in capital to officers, discount of bills of exchange, and commercial paper owned by officer not counted. S. '94, §4103. May loan over 5% to one person if deposits are \$1,000,000. '00, ch. 53.	
Fixed by charter.	
None.	
None.	
None.	
None.	

SCHEDULE XIV A.

STATES AND TERRITORIES.	INVESTMENTS. (Legal restrictions.)
	Banks.
Alabama.....	None.
Arizona.....	None.
Arkansas.....	None.
California	None.
Colorado.....	May hold only necessary real estate and that acquired in business. Mill Fixed by charter.
Connecticut.....	Banks and trust companies are specially chartered. No general law in state.
Delaware.....	National Banks. Yes.
Dist. of Columbia.....	
Florida.....	None.
Georgia.....	None.
Iowa.....	None.
Idaho.....	None.
Illinois.....	None.
Indian Territory.....	None.
Indiana.....	May hold only necessary real estate and that acquired in business. Horner \$2695.
Kansas.....	May hold real estate to value of 50% of capital. G. S. '01, §457. Not to enter trade or buy stock of bank or corporation or loan or hold its own stock; may own stock if necessary to prevent loss. G. S. '01, §417.
Kentucky.....	May hold only necessary real estate and that acquired in business. S. '01. Not engage in trade. S. §582.
Louisiana.....	Not engage in trade. R. L. §314.
Massachusetts	Many restrictions. '94, ch. 317. §21. May hold real estate to amount of 5% of capital. Not to deal in other than exchange, notes, bullion, stocks, or bonds. P. G. I. 170; '95, ch. 161.
Maryland.....	Many restrictions; only in prescribed securities. R. S. '83, ch. 47, §§102, 103.
Maine.....	May hold only necessary real estate or that acquired in business. C. L. '97.
Michigan.....	May hold only necessary real estate and that acquired in business. S. '94, §38.
Minnesota.....	May own \$1,000,000 worth of property. Code §838.
Mississippi.....	Not to engage in industrial pursuits. R. S. '99, §1291.
Missouri.....	May hold only necessary real estate and that acquired in business. C. C. §57.
Montana.....	May hold only necessary real estate and that acquired in business. C. S. '97.
Nebraska.....	None.
Nevada.....	May hold only necessary real estate and that acquired in business. C. S. '97.
North Carolina.....	None.
North Dakota.....	May hold only necessary real estate and that acquired in business. R. C. '97.
New Hampshire.....	Not over 10% of deposits or paid in capital in one investment. P. S. '01, p. 5.
New Jersey.....	Not over 25% of capital in real estate. May hold real estate acquired by judicial sale. '99, ch. 173.
New Mexico.....	May hold real estate necessary for business and that acquired by judicial sale. C. L. '97, §248.
New York	May hold only necessary real estate and that acquired in business. Birdseye.
Ohio.....	May hold necessary real estate and that acquired by judicial sale. Bates.
Oklahoma	Not over 1/3 of capital to be invested in real estate except such as is acquired in business. Not to engage in commerce, nor invest in stock of corporation or count on, or own shares of its own stock. '99, ch. 4.
Oregon	None.
Pennsylvania	Only real estate necessary and that acquired in business. P. & L. Digest p. 1.
Rhode Island.....	Fixed by charter.
South Carolina.....	Fixed by charter.
South Dakota.....	Only real estate necessary and that acquired in business. R. S. '99, §4340.
Tennessee	Only necessary real estate and that acquired in business. Code '96, §3226.
Texas ¹	None.
Utah	Necessary real estate and that acquired in business. R. S. '98, §376.
Vermont	Necessary real estate and that acquired in business. Not to invest funds in or commerce. S. '94, §§4031,2.
Virginia	Necessary real estate and that acquired in business. Code §1163.
West Virginia.....	May not deal in real estate, buy stocks, bonds or securities of corporation or antee corporate debts. Code '99, p. 538. '01, ch. 83, §76.
Washington	None.
Wisconsin	May hold only necessary real estate and that acquired in business. S. '98, §3088.
Wyoming.....	Not to buy its own stock except when necessary. R. S. '99, §3088. May hold necessary real estate and that acquired in business.

¹ Schedule XIX.

SCHEDULE XIV B.

AND RIES.	INVESTMENTS. (Legal restrictions.)
	Trust companies.
None.	
None.	
None.	
None.	
ut.	Not in stock of private corporations. Mills' S. §544a.
Columbia	Fixed by charter.
territory	Fixed by charter.
ets	May hold \$500,000 of real estate, and that acquired in business. Act 1890, §12.
olina	None.
total	None.
eshire.	None.
o ¹	None.
nia	None.
nd.	None.
olina.	Fixed by charter.
ta	Fixed by charter.
	None.
	Not over 50% of paid in capital and surplus in real estate. C. L. §6165.
	Realty only by contracts and stipulations.
	None.
	May own only necessary real estate. R. S. '99, §1430.
	May own only necessary real estate. C. C. §606.
	None.
	None.
	None.
	Same as banks. P. S. '01, p. 541.
	None.
	None.
	Capital to be invested in bonds and mortgages. May not hold more than 10% of stock of private corporations. Birdseye S., p. 251.
	Real estate same as banks. List of securities for investments prescribed. Bates' S. §3821a.
	None.
	None.
	None.
	Fixed by charter.
	Fixed by charter.
	None.
	None.
	None.
	Federal, state, municipal and school district bonds and real estate mortgages. R. S. '98, §429.
	Not over 70% of paid in capital in real estate, mortgages nor 1/3 of assets in personal securities. S. '94, §4099. Other minute regulations. S. '94, §4101.
	None.
	May hold real estate of which they have insured the title. '01, ch. 85.
	None.
	None.
	May hold only necessary real estate. No restrictions as to personal securities. R. S. '99, §3131.

trust companies in State.

² Schedule XIX.

SCHEDULE XV A.

STATES AND TERRITORIES.	CAPITAL. (Legal restrictions.)
	Banks.
Alabama.....	Minimum, \$15,000 to \$25,000 paid in. '99, p. 27; maximum, \$500,000. §§1085, 1086.
Arizona.....	None.
Arkansas.....	None.
California.....	Minimum, \$25,000 to \$200,000; no maximum. '95, ch. 167. Half paid in in m
Colorado.....	Minimum, \$30,000, half paid in; no maximum. Mill's S. §510.
Connecticut.....	Fixed by charter.
Delaware.....	"
Distr. of Columbia	Minimum \$25,000 to \$200,000; no maximum. 50% paid in U. S. R. S. §5138-4.
Florida.....	Minimum, \$15,000 to \$50,000, half paid in. R. S. §2169.
Georgia.....	Minimum, \$25,000; no maximum. 20% or \$15,000 paid in. Code §1910.
Iowa.....	Minimum, \$25,000 to \$50,000 paid in. Code '97, §1864.
Idaho.....	None.
Illinois.....	Minimum, \$25,000 to \$200,000 paid in; no maximum. R. S. '99, pp. 199-200.
Indian Territory.....	None.
Indiana.....	Minimum, \$25,000; no maximum. 50% paid in. Horner's S. '01, §§2684, 2690.
Kansas.....	Minimum, \$5000; no maximum; paid in. G. S. '01, §408.
Kentucky.....	Minimum, \$50,000 to \$100,000; half paid in; no maximum. S. '94, §577, '98, e
Louisiana.....	Minimum, \$10,000 to \$100,000 paid in. R. S. §276.
Massachusetts.....	Fixed by charter.
Maryland.....	Minimum, \$300,000 in Baltimore, \$50,000 in any other part of the state; m \$2,000,000 in Baltimore, \$500,000 in any other part of the state. P. G. L. p. 10
Maine.....	Fixed by charter.
Michigan.....	Minimum, \$20,000 to \$250,000, half paid in. '99, ch. 265.
Minnesota.....	Minimum, \$10,000 to \$25,000 paid in. S. '94, §2490.
Mississippi.....	None.
Missouri.....	Minimum, \$10,000; maximum, \$5,000,000, half paid in. R. S. '99, §1278.
Montana.....	Minimum, \$20,000; no maximum. C. C. §570.
Nebraska.....	Minimum, \$5,000 to \$50,000; no maximum. C. S. '97, §619.
Nevada.....	None.
North Carolina.....	Fixed by charter.
North Dakota.....	Minimum, \$5000 to \$50,000, 50% paid in. R. C. '99, §3231.
New Hampshire.....	Fixed by charter.
New Jersey.....	Minimum, \$50,000 paid in. '99, ch. 173.
New Mexico.....	Minimum, \$30,000, half paid in. C. L. '97, §244.
New York.....	Minimum, \$25,000 to \$100,000 paid in. Birdseye, p. 212.
Ohio.....	Minimum, \$25,000; maximum, \$500,000; 60% paid in. Bates' S. §§3821,3866, 3
Oklahoma.....	Minimum, \$5000 paid in. '99, ch. 4.
Oregon.....	None.
Pennsylvania.....	Minimum, \$50,000, half paid in. Pepper and Lewis, Dig. p. 263.
Rhode Island.....	Fixed by charter.
South Carolina.....	Fixed by charter.
South Dakota.....	Minimum, \$5,000 to \$25,000; half paid in. R. S. '99, §4342.
Tennessee.....	None.
Texas ¹	None.
Utah.....	Minimum, \$25,000 to \$100,000; maximum, \$1,000,000, 25% paid in. R. S. '98, §
Vermont.....	Minimum, \$50,000; maximum, \$500,000 paid in. S. '94, §3998.
Virginia.....	Fixed by charter.
West Virginia.....	Minimum, \$25,000, maximum, \$500,000; 40% paid in. '01, ch. 83.
Washington.....	None.
Wisconsin.....	Minimum, \$25,000, maximum, \$500,000; \$15,000 paid in. S. '98, §2024.
Wyoming.....	Minimum, \$10,000 to \$100,000; 50% paid in. R. S. '99, §3086.

¹ Schedule XIX.

SCHEDULE XV B.

AND DRIES.	CAPITAL. (Legal restrictions.)
	Trust companies.
None.	
None.	
None.	
ut	Minimum, \$250,000 paid in. '91, ch. 264.
olumbia	Minimum, \$50,000 to \$250,000 paid in. Mills' S. §544j.
rritory.	Fixed by charter.
None.	Fixed by charter.
ut	Minimum, \$1,000,000, half paid in. Act 1890, §14.
olumbia	Minimum, \$100,000; maximum, \$2,000,000, \$100,000 paid in. '98, p. 82.
rritory.	Same as banks.
ut	Minimum, \$25,000 paid in. No maximum. '01, p. 26.
rritory.	Same as banks.
ut	None.
ut	Minimum, \$25,000 to \$100,000 paid in. Horner's S. '01, §3815c.
ut	Minimum, \$100,000; maximum, \$1,000,000, 1/5 paid in, remainder within 6 months. G. S. '01, §1469.
ut	Minimum, \$15,000 to \$200,000, half paid in; no maximum. S. '94, §§603, 607. '98, ch. 32. '97, ch. 14.
etts.	Minimum, \$10,000 paid in; no maximum. R. S. §277.
etts.	Fixed by charter.
etts.	Fixed by charter. Foreign surety companies capital, \$250,000 paid in.
etts.	Fixed by charter.
etts.	Minimum, \$150,000; maximum, \$5,000,000, half paid in. C. L. '97, §6157.
etts.	Minimum, \$200,000; maximum, \$2,000,000, \$200,000 paid in. '99, ch. 200.
etts.	Minimum, \$100,000; maximum, \$1,000,000; \$50,000 paid in.
etts.	Minimum, \$1,000,000; maximum, \$10,000,000, quarter paid in. R. S. §1429.
etts.	Minimum, \$100,000; maximum, \$10,000,000; \$100,000 paid in. C. C. §605.
olina	None.
kota ¹	None.
eshire	Fixed by charter.
y	None.
co ¹	Fixed by charter.
nia	Minimum, \$100,000 paid in. '99, ch. 174.
nd	None.
olina	Minimum, \$100,000 to \$500,000 paid in. Birdseye, p. 246.
ota	Minimum, \$200,000 paid in. Bates' S. §3821d.
nia	Minimum, \$200,000, half paid in. '99, ch. 11, art. 5.
nd	None.
olina	Minimum, \$125,000 paid in. '95, ch. 286.
ota	Fixed by charter.
nia	Fixed by charter.
nd	None.
olina	None.
ota	None.
nia	Minimum, \$25,000 to \$100,000 paid in.
nd	Fixed by charter.
olina	Fixed by charter.
ota	Minimum, \$150,000 paid in. '01, ch. 85.
nia	None.
nd	Minimum, \$100,000; maximum, \$5,000,000; 50% paid in. S. '98, §1791d.
olina	Same as banks. 25% paid in; 10% of remainder a month. R. S. '99, §3129.

SCHEDULE XVI.

STATES AND TERRITORIES.	A.	B.
	LIABILITIES. (Legal restrictions.)	
	Banks.	Trust companies.
Alabama	None.	None.
Arizona ¹	None.	None.
Arkansas	None.	None.
California	None.	Deposits must not exceed capital. '91, ch. 264.
Colorado	None.	None.
Connecticut	Fixed by charter.	Fixed by charter.
Delaware	Fixed by charter.	Fixed by charter.
Dist. of Columbia .....	.....	None.
Florida	Not to exceed capital; deposits, bills of exchange and liabilities for dividends not counted. R. S. §2184.	None.
Georgia	None.	None.
Iowa	None.	None.
Idaho	None.	None.
Illinois	None.	None.
Indian Territory	None.	None.
Indiana	None.	None.
Kansas ¹	None.	None.
Kentucky	None.	None.
Louisiana ¹	None.	None.
Massachusetts	None.	None.
Maryland	Not to exceed amount of capital paid. P. G. L. 103. Deposits not to exceed 10 times amount of paid up capital and surplus.	None.
Maine	None.	None.
Michigan	None.	None.
Minnesota	None.	None.
Mississippi	None.	Not to exceed 10 times R. S. '99, §1427.
Missouri	None.	None.
Montana	None.	None.
Nebraska	Not over 2/3 of capital to be invested in rediscounts and bills payable. C. S. '97, §633.	None.
Nevada ¹	None.	None.
North Carolina	None.	None.
North Dakota ¹	None.	None.
New Hampshire	None.	None.
New Jersey	None.	None.
New Mexico ¹	None.	None.
New York	None.	None.
Ohio	Not to exceed paid in capital; deposits, bills of exchange drawn against money credits and liabilities of stockholders for balance on shares not counted as liabilities. Bates' S., §§3821-78.	None.
Oklahoma	None.	None.
Oregon	None.	None.
Pennsylvania	None.	None.
Rhode Island	Not to exceed 65% of capital. Deposits not counted. G. L. '96, p. 543.	None.
South Carolina	Fixed by charter.	Fixed by charter.
South Dakota	None.	None.
Tennessee	Not to exceed assets. Code '96, §3226.	None.
Texas ²	None.	None.
Utah	None.	None.
Vermont	None.	None.
Virginia	None.	None.
West Virginia	None.	None.
Washington	Debenture bonds not to exceed 10 times capital of corporation. Balingen's S., '97, §4266.	None.
Wisconsin	Not to exceed capital; deposits, bills of exchange for money due, rediscounts for cash, liabilities for capital stock and dividends not counted. R. S. '99, §3093.	None.
Wyoming ¹ .....	.....	.....

SCHEDULE XVII A.

AND ORIES.	TAXATION.		Year of passage of law.	
	Banks.			
	Rate and character.			
	Real estate locally. Shares, real estate deducted, to owners where bank is located. Value fixed by local assessor. Tax paid by bank. Code '96, §391, '48; '97, p. 1489, §36.		1897	
	Real estate locally. Shares to owners where bank is located. Value fixed by local assessor. Tax paid by bank. Sandels and Hill's Digest '94, §§6445-54.		1883. S. & H. '94, p. 1429	
	Real estate locally. Shares to owners where bank is located. Value fixed by local assessor. R. S. '87, §2649; '93, ch. 85.		1893	
	Real estate locally. Shares in national banks, real estate deducted, to owners where bank is located and by local assessor. '99, ch. 80. Capital stock of other banks to corporation. Shares not taxed to owners. '95, ch. 167; '99, ch. 80.		1899	
t	Real estate locally. Shares to owners where bank is located. Value fixed by local assessors. Tax paid by bank. Mill's S. §3810a; '93, ch. 139, §24.		1893	
u	Real estate locally. 1% on market value of shares less taxes on realty in state, '01, ch. 165. Savings banks $\frac{1}{4}$ of 1% on deposits, deducting \$50,000 real estate and state aid railroad bonds. G. S. '88, §3918.		1901 1878	
mbria.	Real estate locally. R. S. '93, p. 114. $\frac{1}{4}$ of 1% on capital stock. R. L. '93, p. 54. $\frac{1}{4}$ of 1% on surplus above 25% thereof. R. L. '93, p. 589. \$50 on each \$1000 of capital. Savings banks without capital stock, 1/40 of 1% on deposits every 6 months. C. S. D. C. '94, p. 344, §25. Capital stock, real estate deducted, assessed to bank. C. S. D. C. '94, p. 530.		1869. '69, ch. 393. 1872 1877	
	Real estate locally. '95, p. 4, §6. Shares, real estate deducted, to owners where bank is located. Value fixed by local assessors. Tax paid by bank. '93, p. 41; '95, p. 5. Taxed on trust deposits. '95, p. 5.		1895	
	Real estate locally. Shares, real estate deducted to owners, where bank is located. Value fixed by local assessors. '00, p. 33, §12.		1901	
	Real estate locally. Shares, real estate and debts deducted, to owner where bank is located. Value fixed by local assessor. Tax paid by bank. Deductions for debts. R. S. '87, §1441.		1887	
	Real estate locally. '81, p. 133. Shares to owners where bank is located. Value fixed by local assessor. R. S. '99, p. 1400, §35.		1872	
	Real estate locally. Shares, real estate deducted, to owners where bank is located. Value fixed by local assessor. '73, p. 214. Ann. Statutes. '97, §3257.		1873	
ritory	Shares to owner where bank is located. Value fixed by local assessor. Tax paid by bank. Ind. Terr. Statutes. '99, §§4944-53.		1887	
	Real estate locally. '74, ch. 60, §28. Shares to owners, real estate deducted, where bank is located. Value fixed by local assessor. Tax paid by bank. Code '97, §§1322, 1323.		1890. '90, ch. 39. 1874	
	Real estate locally. Shares, real estate deducted, at true value fixed by local assessor where bank is located. Tax paid by bank. G. S. '99, §7207.		1891. '91, ch. 84.	
	Real estate locally. '86, ch. 1233. Shares in national banks to owner where bank is located. Tax paid by bank. '00, ch. 23. Other banks taxed locally on value of franchise fixed by state board. Shares not taxed. '92, ch. 103; 173 U. S. 636.		1900. '00, ch. 23. 1892.	
	Real estate locally. Shares, real estate deducted, to owners where bank is located. Value fixed by local assessors. Tax paid by bank. R. L. '97, p. 798.		1888. '88, ch. 85, p. 111.	
	Real estate locally. R. S. '83, ch. 6. Shares national and state banks locally. R. S. '83, ch. 6. Savings banks 7/8 of 1% on value of franchise fixed by state assessors. '95, ch. 130.		1845 1895	
	Real estate locally. '96, ch. 120. Shares, real estate deducted, at market value fixed by state tax commissioner. Tax paid by bank. '96, ch. 120.		1896	
ets	Real estate locally. Shares of stock at cash value where bank is located. '73, ch. 315.		1873	
	Real estate locally. C. L. '97, §6148. Shares, real estate deducted, as personalty to owner at residence. Value fixed by local assessor. C. L. '97, §3331.		1893. '93, ch. 206.	
	Real estate locally. Shares, real estate deducted, to owners where bank is located. Value fixed by local assessor. Tax paid by bank. Statutes '94, §1532.		1878	
	Real estate locally. Code '92, §3749. Shares to owners where bank is located. Value fixed by local assessor. Tax paid by bank. '00, ch. 3.		1900	
	Real estate locally. Shares, real estate deducted, to owners where bank is located and by local assessors. Tax paid by bank. R. S. '99, §9153.		1895. '95, ch. 242.	

banks can only be taxed on shares of stock in names of shareholders, and on their real estate.
64; U. S. Sup. Ct., April 3, 1899.

SCHEDULE XVII A.—Continued.

STATES AND TERRITORIES.	TAXATION.		Ye pa of	
	Banks.			
	Rate and character.			
Montana	Real estate locally. Shares, real estate deducted, to owners where bank is located. Value fixed by local assessor. Pol. Code, §3691. Banks and trust companies pay license from \$10 to \$100 a quarter according to business. Pol. Code, §4061.		1898	
Nebraska	Real estate locally. Shares, real estate deducted, to owner where bank is located. Value fixed by local assessor. C. S. '97, §§4311-14.		1871	
New Mexico	Real estate locally. Shares, real estate deducted, to owner where bank is located. Value fixed by local assessor. Tax paid by bank, C. L. '97, §§257-9, 4025.		p. 2 ch.	
Nevada	Real estate locally. C. L. '00, §1084. Shares to owner at residence. Value fixed by local assessor. '00, C. L. §1084. License from \$12 to \$200 a month, according to business done. C. L. '00, §1190.		189 ch.	
New Hampshire	Real estate locally. Shares, real estate deducted, to owners by local assessors. P. S. '01, p. 227. Savings banks, 3/4 of 1% on deposits drawing interest, real estate and mortgage loans in N. H. at not exceeding 5% deducted. P. S. '01, p. 229. Stock, savings banks 1% on guarantee fund or capital stock in addition to above. P. S. '01, p. 229.		188 ch. IIb.	
New Jersey	Real estate locally. Shareholders on actual value of stock in district of residence. '00, ch. 107.		190	
New York	Real estate locally. State tax of 1% on capital stock, surplus and undivided profits. No deductions. '01, ch. 550.		190	
North Carolina	License, \$25 on \$1000 capital; \$2 for each \$1000 additional. Real estate locally. Shares, less real estate at actual value where bank is located for state purposes, and tax paid by bank to state treasurer. \$25 for each branch bank. For local purposes shares are taxed where owner resides. '99, ch. 15, §40.		189	
North Dakota	Real estate locally. Shares, real estate deducted, to owners where bank is located. Value fixed by local assessor. Code '99, §1203.		189	
Ohio	Real estate locally. Shares to owners where bank is located. Value fixed by county auditor. Tax paid by bank. Bates' statutes, '97, §§2762-66, 2840.		188 ch.	
Oklahoma	Real estate locally. Shares to owner where bank is located. Value fixed by local assessor. Tax paid by bank. Statutes '93, §§5598-5601.		188	
Oregon	Real estate locally. Shares at par value to owners at residence. Hill's Laws, '92, §2764.		187 L. 129	
Pennsylvania	Real estate locally for local purposes. Shares, 2/5 of 1% on actual value, or 1% on par value at option of bank. Tax paid by bank. '97, ch. 227.		188 ch.	
Rhode Island	Real estate locally. Shares in national banks, real estate deducted, to owner at residence and by local assessor. Savings banks \$40 a \$100 of deposits and profits, '93, ch. 1215.		188	
South Carolina	Real estate locally. Shares at true value, real estate deducted, where bank is located and by local assessors. Tax paid by bank. R. S. '93, §253-60.		188 ch.	
South Dakota	Real estate locally. Shares, real estate deducted, to owners where bank is located. Value fixed by local assessor. Ann. S. '99, §2156.		188 ch.	
Tennessee	Real estate locally. Shares, real estate deducted, to owners where bank is located. Value fixed by local assessors. Tax paid by bank. Code '96, §§790, 791.		188 ch.	
Texas ¹	Real estate locally. Share, real estate deducted, to owners where bank is located. R. S. '95, §5080. Occupation tax, \$25 to \$240 according to population. R. S. '95, p. 1015.		188 ch.	
Utah	Real estate locally. Shares, real estate and debts deducted, to owners where bank is located. Value fixed by local assessors. R. S. '98, §2507.		188 p. 4	
Vermont	Shares in national banks to owners at residence by local assessors. '92, ch. 16. Savings banks 7/10 of 1% on deposits; 10% of assets invested in United States bonds, and individual deposits above \$1500 if listed elsewhere, to be deducted. '96, ch. 18.		188 ch.	
Virginia	Real estate locally. Shares at market value to owners where bank is located and by local assessor. Rate, \$.40 a \$100. Tax paid by bank. '96, ch. 669.		188 ch.	
Washington	Real estate locally. Shares, real estate deducted, to owners where bank is located. Value fixed by local assessors. Tax paid by bank. Ballinger's Codes, '97, §4266. '97, ch. 147.		188 p. 1	
West Virginia	Real estate locally. Value of capital, real estate and debts deducted, assessed to firm by local assessor. Shares not taxed. Code '99, pp. 202, 203. License tax from \$10 to \$70 according to capital. '01, p. 111.		188 ch.	
Wisconsin	Real estate locally. Shares where bank is located, and by local assessors. Statutes '98, §§1039, 1042, 2024.		188 ch.	
Wyoming	Real estate locally. Shares to owners at residence. Value fixed by local assessor. R. S. '99, §§1772-74.		188 ch. 76.	

SCHEDULE XVII B.

ES AND TORIES.	TAXATION.		Year of passage of law.	
	Trust companies.			
	Rate and character.			
.....	No trust company legislation. Corporations are taxed same as banks. '98-9, p. 48; '01, p. 214. License tax \$10 to \$50 a year according to capital. '01 p. 229.		1901.	
.....	No trust company legislation. Corporations taxed on assets like individuals. Shares of stock taxed to owner as personal property. S. & H. Digest, '94, §§6462, 6463.		1887. S. & H. p. 1432.	
.....	No trust company legislation. Real estate of corporations taxed locally. Shares not taxed to owner if capital stock is taxed to firm. R. S., '87, §2649.		1887.	
a.....	Same as for banks other than national, '99, ch. 80.		1899.	
.....	Corporations taxed on actual or market value of real and personal estate by local assessors. Shares not taxed to owners, '93, ch. 139, §29.		1902.	
cut	Attorney General's Report, '93-4, p. 34.			
Columbia	Same as for banks, '01, ch. 165.		1901.	
.....	Same as banks. '93, p. 54.		1869.	
.....	Real estate locally, 1½% on gross earnings. Shares not taxed. U. S. Statutes at Large, vol. 26, p. 629. Capital stock, real estate deducted, assessed to company. C. S. D. C., '94, p. 530.		1890.	
.....	No trust company legislation. Same as for banks. '95, pp. 5, 13.		1895.	
.....	Same as for banks. '98, p. 78. 1% on all premiums in addition. Paid to comptroller, '00, p. 28, §7.		1898.	
.....	Real estate of corporations locally. Capital stock and other property in name of firm at value fixed by local assessor. Shares not taxed. R. S., '87, §§1440-2.		1901.	
.....	Same as banks. R. S. '99, p. 1400.		1887.	
.....	Real estate of corporations locally. Capital stock at full cash value, real estate and personality deducted. Paid by corporation. Ann. S., '97, §§6337-8, 6279-80.		1893. '93, p. 173.	
territory	No trust company legislation. No provisions for taxation of corporations except occupation tax to non-citizens. Am. Corporation Legal Manual, '01, p. 165.		1891.	
.....	Same as for banks. Code '97, §§1322, 1323.			
.....	Same as for banks. G. S., '99, §7207.		1874. '74, ch. 60.	
ky.....	Same as for banks. '92, ch. 103.		1890. '90, ch. 39.	
na ¹	Same as for banks. R. L., '97, p. 798.		1891. '91, ch. 84.	
.....	Real estate locally. Shares to owners locally. R. S., '83, ch. 6, §29. ½ of 1% on value of franchise fixed by state assessors. '95, ch. 130.		1892.	
ad.....	Same as for banks. '96, ch. 120. 2% on gross receipts in addition. '96, ch. 120, §146.		1888. '88, ch. 85.	
usests	Real estate locally. '62, ch. 183. Market value of shares less real estate at average rate in state. Personality held in trust at above rate. ½ of average rate on other than demand deposits. '88, ch. 413.		1845.	
in.....	Real estate locally. Shares, real estate deducted to owner at residence and by local assessors. C. L. '97, §6168. 2% of gross premiums as surety on bonds. '97, ch. 106.		1895.	
ta.....	Real estate of corporations locally. Shares, real estate deducted, at market value where corporation is located. Value fixed by local assessor. Statutes '94, §§1516, 1530.		1896.	
ppi.....	Real estate of corporations locally. Assets taxed to firm. Shares not taxed to individuals. Code '92, §§3750-8.		1888.	
			1889. '89, ch. 108.	
			1897.	
			1881.	
			1892. Code adopted.	

¹ No trust companies in State.

SCHEDULE XVII B.—Continued.

STATES AND TERRITORIES.	TAXATION.		Ye ch. p. of	
	Trust companies.			
	Rate and character.			
Missouri.....	Same as for banks. R. S. '99, §9153.		1895	
Montana	Same as for banks. Civil code §611.		ch. 2 1899	
Nebraska.....	No trust company legislation. Real estate of corporations locally. Capital, debts and real and personal estate deducted at place of principal office. C. S. '97, §§4289, 4313.		p. 10 1879	
Nevada ¹	No special tax. No trust company legislation. License same as banks. C. L. '00, §1190. Real estate locally. Capital stock at actual value; shares not taxed. Property taxes deducted. C. L. '00, §§1084-9. 3/4 of 1% on deposits drawing interest, real estate and mortgage loans in N. H. at not exceeding 5% deducted, and 1% on capital stock, real estate deducted if not already deducted from deposits. P. S. '01, p. 229.		1899 ch. 4	
New Hampshire	Real estate locally for local and school purposes. True value of capital stock less real estate is taxed at local rate in office district. Capital property and franchises exempt from other taxes. '99, ch. 174.		1895	
New Jersey	Real estate locally for local and school purposes. True value of capital stock less real estate is taxed at local rate in office district. Capital property and franchises exempt from other taxes. '99, ch. 174.		1899	
New Mexico ¹	Same as banks. C. L. '97, §§257-9, 4025.		1891	
New York.....	Real estate locally. '96, ch. 908. State tax of 1% on capital stock, surplus and undivided profits. '01, ch. 132.		ch. 4 1901	
North Carolina	No trust company legislation. Real estate of corporations locally. Capital stock less realty to company. Shares not taxed to owners. '99, ch. 15, §14.		1899	
North Dakota ¹	No special tax. Property of corporations assessed at market value, debts deducted, by local assessor. Code '99, §1198.		1897 ch. 1	
Ohio	Real estate locally. Shares where company is located. Value fixed by county auditor. Tax paid by company. This is for general corporations. No special law. Bates' S. '97, §§2758, 2762-6, 2840.		1867	
Oklahoma	No special law. Real estate of corporations locally. Corporations taxed locally like individuals. Shares taxed to owner at residence. Statutes §§5580-3.		1893	
Oregon	No trust company legislation. Real estate of corporations locally. Capital at place where principal office is located. Shares not taxed to individuals. Hills L. 92, §§2744, 2750.		1864 Hill 1281 1891	
Pennsylvania	Real estate locally for local purposes. 1/2 of 1% on actual value of capital stock. 4/10 of 1% on obligations held by residents. 2/5 of 1% on taxable securities held in trust. '91, ch. 200.		1893	
Rhode Island	\$40 a \$100 of deposits. '93, ch. 1213. Shares, real estate deducted to owner at residence by local assessor. G. L. '96, p. 182.		1872 1882 ch. 6 1897	
South Carolina.....	No trust company legislation. Same as for banks. R. S. '93, §261.		1891	
South Dakota.....	No special tax. Corporations taxed on market value of real and personal estate, debts deducted. Value fixed by local assessor. Ann. S. '99, §2153.		ch. 2	
Tennessee.....	Same as for banks. Code '96, §§790-1.		1895	
Texas ²	No special tax. Occupation tax same as banks. \$25 a year on filing statement. R. S. §642. Corporate property assessed like that of individuals by local assessor. R. S. §§5084, 5118.		1876 p. 28	
Utah.....	Same as for banks. R. S. '98, §2507.		p. 42	
Vermont	Same as savings banks. '96, ch. 18.		1896	
Virginia.....	Annual license tax \$200: 1% tax on gross annual receipts.		1890	
Washington.....	Same as for banks. There is no provision for organization of trust companies apart from banks. Ballinger's code '97, §4266.		1887 ch. 1	
West Virginia	Same as for banks. Code '99, pp. 202-3; '01, p. 111.		1901	
Wisconsin.....	Real estate locally. License of \$300 annually. 2% on net profits. Statutes '98, §1222k.		1891 ch. 2	
Wyoming ¹	Same as for banks. No tax on capital stock of domestic corporations. R. S. '99, §1774.		1895 ch. 8	

¹ No trust companies in State.² Schedule XI

SCHEDULE XVIII.

States.	Restrictions on the use of the word "trust" in the title of corporations.
Indiana	Only corporations organized under Trust Act may use word trust in title. Horner's S. '01, §3815q.
Massachusetts.....	Only incorporated trust companies may use word trust in title. Exception in case of licensed insurance companies already in operation. '99, ch. 467.
New Jersey	Only corporations organized under Trust Act may use word in title. '99, ch. 174, §1.
New York.....	Only corporations formed under Banking and Insurance Laws may have word trust, banking, assurance, guaranty, savings, investment or loan as part of title. '00, ch. 704.
No other states appear to have such restrictions.	

SCHEDULE XIX.—GENERAL REMARKS.

Alabama.....	No trust company legislation.
Arizona.....	" " " No companies in State.
Arkansas.....	" " "
Florida	" " "
Illinois.....	Banks may acquire trust powers.
Indian Territory.....	No legislation on banks or trust companies.
Kansas	No trust companies in State.
Louisiana	No legislation for other than banks with trust powers. No companies in State.
Massachusetts.....	No state banks in the state, other than savings banks.
Nebraska	No trust company legislation.
Nevada	" " " No companies in State.
New Mexico	Act provides for savings banks and trust associations, but usual trust powers not mentioned. No companies in State.
North Dakota.....	No trust companies in State.
Oregon.....	No trust company legislation.
South Carolina.....	No trust company legislation.
Tennessee	No trust company legislation.
Texas	No corporate body shall hereafter be created, renewed or extended with banking or discount privileges. Const. '76, Art. 16, §16.
Washington	No legislation for other than banks with trust powers.
Wyoming.....	No trust companies in State.

APPENDIX IV

TABLE I.—TRUST COMPANIES IN NEW YORK STATE.
From Reports of Superintendent of Banking.

Years.	No.	Capital.	Resources.	Trust deposits.	General deposits.
1875.....	12 ¹	\$11,584,475	\$69,654,948	\$29,442,552	\$20,923,017
1881.....	13 ²	11,500,000	125,888,913	61,321,484	32,800,852
1885.....	20 ²	14,202,900	165,023,132	75,422,656	52,289,212
1886.....	20 ²	15,260,950	189,166,059	76,971,344	72,523,792
1887.....	21 ²	15,603,000	201,030,840	106,133,132	51,854,439
1888.....	25 ²	19,501,300	224,018,183	89,463,837	85,640,807
1889.....	29 ²	22,287,000	269,517,355	130,954,406	83,290,756
1890.....	32 ³	24,787,000	293,427,787	104,974,386	124,537,051
1895.....	38 ⁴	29,600,000	392,630,045	123,069,072	184,282,820
1898.....	44 ³	33,000,000	483,739,925	185,099,694	198,229,029
1899.....	49 ³	34,850,000	579,205,442	197,664,749	269,519,509
1900.....	59 ³	48,050,000	672,190,671	213,484,885	310,056,684
1901.....	57 ³	47,150,000	797,983,512	245,367,995	392,753,774

¹ June 30.

² July 1.

³ January 1.

⁴ January 1, 1896.

TABLE II.—RESOURCES OF FINANCIAL INSTITUTIONS IN NEW YORK STATE.
From Report of New York Supt. of Banking, Feb. 26, 1901. p. 11.

Jan. 1.	Savings banks.	Deposit and discount banks.	Trust companies.	Safe deposit companies. ¹
1891.....	\$667,865,396	\$233,839,051	\$280,688,768	\$3,964,942
1892.....	675,987,634	271,830,699	300,765,575	4,370,117
1893.....	718,454,662	295,459,929	335,707,779	5,045,787
1894.....	704,535,118	271,496,822 ²	341,466,011	5,025,769
1895.....	735,863,598	284,911,631	365,419,729	5,102,689
1896.....	783,078,580	285,407,997	392,630,045	4,517,699
1897.....	812,173,632	280,691,855	396,742,947	4,677,325
1898.....	869,571,244	324,766,619	483,739,925	5,116,362
1899.....	932,420,861	355,485,972	579,205,442	5,197,996
1900.....	1,000,209,099	366,304,182	672,190,671	5,269,271
1901.....	1,066,019,216	380,711,930	797,983,512	5,255,452

¹ The Buffalo Loan, Trust and Safe Deposit Co., and the Rochester Safe Deposit and Trust Co., are not included with the Safe Deposit Companies, as they are given under the head of Trust Companies.

² November 28, 1892.

TABLE III.—TRUST COMPANIES.

States.	Years.	Capital.	Surplus and undi- vided profits.	Resources	Deposits	Loans.		Notes.
						Collateral.	On per- sonal security.	
<i>New York.....</i>								
1875	12	\$11,584,475	\$5,144,083	\$69,654,948	\$50,365,569	\$19,635,475	\$13,092,646	N. Y. Bank Rept., '75, p. 156.
1885	18	14,202,900	12,996,294	165,023,132	127,711,868	67,597,352	11,382,111	" " " 85, p. 10.
1895	38	28,800,000	43,713,976	365,419,729	285,741,794	170,523,324	22,791,215	U. S. Comp. Rept., '95, p. 495.
1900	59	48,250,000	89,825,970	796,483,887	640,837,146	379,274,064	47,937,934	" " " '00, p. 566.
<i>Massachusetts.....</i>								
1875	5	1,821,400	1,269	9,031,335	6,924,308	.....	6,865,034	U. S. Comp. Rept., '75, p. XCVII.
1885	6	3,300,000	1,137,155	24,280,745	19,640,061	.....	16,676,100	" " " 85, p. 177.
1895	25	9,775,000	7,415,093	110,879,136	82,887,853	.....	87,252,636	" " " 95, p. 495.
1900	34	11,375,000	11,026,552	128,266,908	105,674,935	26,356,192	59,729,529	U. S. Comp. Rept., '00, p. 546.
<i>Pennsylvania.....</i>								
1875	7	5,748,145	1,851,007	31,795,392	22,730,643	.....	18,613,957	" " " '75, p. XCVII.
1885	9	8,375,000	5,789,868	56,323,164	37,309,424	.....	27,024,120	" " " 85, p. 177.
1895	82	39,018,085	18,977,739	189,166,991	95,813,556	65,058,344	4,307,698	" " " 95, p. 495.
1900 ²	110	41,682,615	33,325,002	278,813,542	168,824,963	102,664,630	11,306,059	Pa. Comr. of Bkg. Rept. pt. 1, p. 644.
<i>Illinois.....</i>								
1875	5	2,500,000 ³	725,000 ³	.....	5,688,574 ³	.....	.....	U. S. Comp. Rept., '75, p. XCVII.
1885	"	"	"	.....	.....	.....	.....	.....
1895 ⁴	9	9,854,610	4,485,151	61,401,002	44,277,012	.....	38,723,877	Auditor's Rept., 1895.
1900 ⁴	12	14,100,000	7,751,547	136,747,024	114,595,449	.....	79,679,268	" " 1900.

¹¹ Includes stocks and bonds.

5 November 1990.

3 For Chicago only.

State banks with trust powers.

TABLE IV.—STATE BANKS.

States.	Years.	Number.	Capital.	Surplus and undivided profits.	Resources	Deposits.	Loans.		Notes.
							Collateral.	On personal security.	
New York.....	1875	84	\$24,915,090	\$3,096,094	\$107,071,918	\$61,834,937	.....	\$68,191,919	N. Y. State Bank Rept., '75, p. 7.
	1885	92	22,350,700	11,605,775	167,667,499	116,774,018	.....	97,928,129	" " " " '85, p. 6.
	1895	211	32,504,000	27,294,861	271,448,300	178,331,859	.....	150,438,635	" " " " '95, p. 6.
	1900	203	28,810,700	28,308,438	351,080,252	238,194,498	.....	201,578,995	" " " " '00, p. XXV
Massachusetts... Figures for savings banks.	1875	179	There are no State banks in Mass. Banking is done by mutual savings banks with no capital and by trust co's.	3,490,934	220,943,055	217,452,121	\$109,234,540 ²	54,807,174	U. S. Comp. Rept., '75, p. XCV.
	1885	168		10,939,875	273,916,918	262,720,147	98,979,283 ²	74,052,754	" " " " '84, p. 178.
	1895	185		25,342,154	442,301,265	416,778,018	188,429,019	88,256,796	" " " " '95, p. 496.
	1900	186		34,629,320	568,674,400	533,845,790	239,918,482	111,019,237	" " " " '00, p. 552.
Pennsylvania....	1875	121	11,022,966	2,140,689	40,391,878	25,666,376	.....	25,539,024	U. S. Comp. Rept.
	1885	81	8,050,205	2,366,028	39,714,836	28,161,754	.....	23,737,720	" " " "
	1895	79	8,421,705	5,711,988	54,180,166	37,777,760	10,876,550	17,130,543	" " " " p. 491.
	1900	95	8,422,014	8,390,120	91,694,739	73,345,813	.....	47,331,358	" " " " p. 542.
Illinois ¹	1895	132	18,379,500	13,203,962	131,286,415	94,885,367	.....	86,121,805	U. S. Comp. Rept., p. 491, etc.
	1900	155	18,375,000	12,828,110	224,909,888	153,496,886	.....	122,338,384	{ " " " " Auditor's Rept., '00, p. 417. P. 566.

¹ State banks, trust companies and stock savings banks.² On real estate.

TABLE V.—NATIONAL BANKS.

TABLE VI.—TRUST COMPANIES.

States.	Years.	Number.	Capital.	Surplus and undivided profits.	Resources	Deposits	Loans.		Notes.
							Collateral.	On personal security.	
Connecticut.....	1875	10	\$2,200,000	\$363,527	\$5,711,438	\$3,069,331	.....	\$3,736,015	U. S. Comp. Rept., p. XCVII.
	1885	6	976,000	3,477,813	2,168,519	.....	.....	.....	.....
	1895	10	1,186,610	752,484	7,311,050	5,244,275	.....	4,384,042	.....
	1900	14	1,775,000	1,001,459	11,485,840	8,540,191	\$1,091,875 ¹	4,716,374	U. S. Comp. Rept., pp. 546, 562.
Rhode Island.....	1875	1	500,000	190,674	6,694,862	1,935,520	4	3,954,254	U. S. Comp. Rept., p. XCVII.
	1885	1	800,000	28,836	8,368,299	7,539,453	.....	4,130,156	.....
	1895	8	2,808,636	972,323	25,273,253	6,016,621	7,830,123	.....	.....
	1900	6	2,940,741	2,834,792	46,511,314	40,582,389	3,842,640	21,170,100	pp. 494, 562.
Maine.....	1895	15	1,205,400	277,892	5,835,868	3,535,382	821,056 ¹	2,576,256	U. S. Comp. Rept., p. 494.
	1900	17	1,601,700	729,907	12,152,207	9,058,640	1,095,463 ¹	5,162,360	pp. 547, 562.
New Jersey.....	1895	19	1,869,510	1,050,820	17,931,744	13,851,502	8,147,356	2,342,227	.....
	1900	30	5,660,800	5,307,890	52,673,028	40,045,750	.....	22,876,325	pp. 494, 562.
Delaware.....	1895	2	1,000,000	269,181	3,302,039	1,880,277	870,490	44	44
	1900	2	1,000,000	403,926	4,750,077	3,323,140	740,657	741,367	pp. 494, 562.
Maryland.....	1895	4	1,817,275	1,027,507	4,373,895	1,287,585	1,080,693	166,177	44
	1900	6	4,616,000	4,601,222	13,768,369	4,201,875	4,453,805	240,274	44
Dist. of Columbia....	1895	3	3,250,000	484,067	9,348,272	4,463,249	.....	6,108,964	44
	1900	4	4,148,750	848,297	16,041,722	10,719,357	.....	9,796,092	44
Indiana.....	1895	3	1,400,200	113,447	1,891,095	229,675	835,402	.....	44
	1900	12	2,467,000	340,276	7,183,120	3,677,329	3,532,002	44,187	44
Minnesota.....	1895	9	3,895,837	641,949	6,790,223	1,559,732	.....	.....	44
	1900	6	2,236,076	169,753	4,222,299	988,203	1,052,368	.....	44
Kentucky.....	1900	3	1,150,400	192,682	2,388,078	322,081	1,288,997	594	44
Iowa.....	1895	9	1,699,872	5,264,835	10,283,579	1,913,196	7,136,306	1,723,690	44
Missouri.....	1895	7	6,150,000	1,413,766	16,367,807	6,687,974	8,869,439	566,637	44

¹ On real estate.

TABLE VII.

(Prepared for George Cator by The Bradstreet Company.)

LIST OF COMPANIES IN THE FOLLOWING STATES WHO ACT AS TRUSTEES OR ADMINISTRATORS AND EXECUTE SUCH FORMS OF TRUST.

Name.	Town.	State.	Stat.	Cap. & Sur.
Birmingham Trust and Savings Co.	Birmingham, Ala.		12-31-01	\$ 575,000
Alabama Trust and Savings Co.	Birmingham, "		12-31-01	105,000
Peoples Savings Bank and Trust Co.	Birmingham, "		12-31-01	78,000
Union Trust and Savings Co.	Montgomery, "		12-31-01	45,883
Alabama Trust and Banking Co.	Sheffield, "		12-31-01	60,000
Arizona None.				
Jonesboro Saving and Trust Co.	Jonesboro, Ark.		12-31-01	50,000
Little Rock Trust Co.	Little Rock, "		4-16-02	79,804
Cotton Belt Saving Trust Co.	Pine Bluff, "		12-31-01	70,522
Union Trust Co.	Little Rock, "		4-30-02	50,000
Broadway Bank and Trust Co.	Los Angeles, Cal.		4- 1-02	113,000
State Bank and Trust Co.	Los Angeles, "		12-31-01	525,000
Los Angeles Trust Co.	Los Angeles, "		5- 1-02	450,000
Pasadena S. T. and S. D. Co.	Pasadena, "		12-31-01	25,000
California S. D. and Trust Co.	San Fran., "		5- 1-02	1,241,607
Germania Trust Co.	San Fran., "		12-31-01	340,000
Mercantile Trust Co.	San Fran., "		4-30-02	1,000,000
Union Trust Co.	San Fran., "		12-31-01	1,252,169
East Florida Saving and Trust Co.	Palatka, Fla.		12-31-01	30,000
Sanford Loan and Trust Co.	Sanford, "		12-31-01	30,540
Citizens Bank and Trust Co.	Tampa, "		12-31-01	175,000
Spokane and Eastern Trust Co.	Moscow, Idaho.		4-30-02	100,000
Antlers Bank and Trust Co.	Antlers, Ind. Ty.		6- 1-02	14,500
Citizens Bank and Trust Co.	Coalgate, "		12-31-01	15,000
Territorial Trust and Surety Co.	Muskogee, "		12-31-01	100,001
German Trust Co.	Davenport, Iowa.		5- 1-02	72,361
Iowa Loan and Trust Co.	Des Moines, "		4- 1-02	600,000
Citizens Saving and Trust Co.	Iowa City, "		12-31-01	65,000
Wettstein Loan and Trust Co.	La Porte C., "		5- 1-02	50,000
Home Trust and Saving Bank	Osage, "		12-31-01	27,546
Farmers Loan and Trust Co.	Sioux City, "		5- 1-02	600,000
Leavitt and Johnson Trust Co.	Waterloo, "		12-31-01	150,000
Kansas None.				
Louisiana None.				
Belzona Trust and Banking Co.	Belzona, Miss.		12-31-01	25,000
Delta Trust and Banking Co.	Vicksburg, "		5- 1-02	143,040
Walton Trust Co.	Butler, Mo.		4-30-02	60,500
Fredericktown Trust Co.	Fredericktown, "		4-30-02	125,000
Fidelity Trust Co.	Kansas City, "		3-31-02	1,459,513
Missouri Union Trust Co.	Kansas City, "		12-31-01	100,000
South Western Trust Co.	Kansas City, "		3-13-02	63,276
United States Trust Co.	Kansas City, "		12-31-01	250,000
Missouri Valley Trust Co.	St. Joseph, "		4-30-02	100,000
American Central Trust Co.	St. Louis, "		12-31-01	1,500,000
Colonial Trust Co.	St. Louis, "		4-30-02	3,000,000
Commonwealth Trust Co.	St. Louis, "		4-30-02	2,000,000
Germania Trust Co.	St. Louis, "		4-30-02	1,673,460
Lincoln Trust Co.	St. Louis, "		4-30-02	3,500,000
Mercantile Trust Co.	St. Louis, "		12-31-01	3,500,000
Mississippi Valley Trust Co.	St. Louis, "		4-30-02	6,500,000
St. Louis Trust Co.	St. Louis, "		12-31-01	5,000,004
Missouri Trust Co.	St. Louis, "		4-30-02	2,134,940
Union Trust Co.	St. Louis, "		12-31-01	5,000,000
Union Bank and Trust Co.	Helena, Mont.		12-31-01	125,000
Smith Bros. Loan and Trust Co.	Beatrice, Neb.		12-31-01	128,000
Empire Loan and Trust Co.	Haigler, "		5- 1-02	5,600
Lincoln S. D. and Trust Co.	Lincoln, "		5- 1-02	25,500
Equitable Trust Co.	Omaha, "		12-31-01	201,000
Nevada None.				
New Mexico None.				
North Dakota None.				

TABLE VII.—Continued.

Name.	Town.	State.	Stat.	Cap. & Sur.
Union Trust Co.....	Oklahoma, Okla.		12-31-01	46,500
Grants Pass Bank and Trust Co.....	Grants Pass, Ore.		12-31-01	25,000
Security Saving and Trust Co.....	Portland, "		12-31-01	260,000
Portland Trust Co.....	Portland, "		12-31-01	300,000
Farmers Loan and Trust Co.....	Anderson, S. C.		12-31-01	78,858
Columbian Bank and Trust Co.....	Charleston, "		12-31-01	53,000
Exchange Bank and Trust Co.....	Charleston, "		12-31-01	100,000
Hibernia Trust and Saving Bank.....	Charleston, "		12-31-01	42,181
S. C. Loan and Trust Co.....	Charleston, "		12-31-01	105,908
Central Bank and Trust Co.	Sioux Falls, S. Dak.		1-15-02	26,590
State Bank and Trust Co.....	Sioux Falls, "		12-31-01	69,438
Ashland City Bank and Trust Co.....	Ashland C., Tenn.		12-31-01	4,750
Citizens Bank and Trust Co.....	Chattanooga, "		12-31-01	235,000
Clarksville Trust and Bank Co.....	Clarksville, "		12-31-01	50,000
Dayton Bank and Trust Co.....	Dayton, "		12-31-01	23,000
Dickson Bank and Trust Co.....	Dickson, "		12-31-01	19,900
Williamson Co. Bank and Trust Co.....	Franklin, "		12-31-01	150,000
Banking and Trust Co.....	Jonesboro, "		12-31-01	25,000
Knox Co. Bank and Trust Co.....	Knoxville, "		12-31-01	46,973
Lawrence Bank and Trust Co.....	Lawrenceburg, "		12-31-01	28,000
Lynnnville Bank and Trust Co.....	Lynnnville, "		12-31-01	23,000
American S. B. and Trust Co.....	Memphis, "		12-31-01	50,000
Memphis Trust Co.....	Memphis, "		4-30-02	462,073
Nashville Trust Co.....	Nashville, "		5- 1-02	390,623
Union Bank and Trust Co.....	Nashville, "		12-31-01	158,064
Com. Bank and Trust Co.....	Pulaski, "		12-31-01	36,927
Robertson Co. Bank and Trust Co.....	Springfield, "		12-31-01	32,500
Utah Savings and Trust Co.....	Salt Lake C., Utah.		12-31-01	163,000
Burlington Trust Co.....	Burlington, Vt.		4-30-02	194,005
Enosburg Falls S. B. and Trust Co.....	Enosburg F's, "		12-31-01	27,894
Ludlow S. B. and Trust Co.....	Ludlow, "		12-31-01	50,000
Capital S. B. and Trust Co.....	Montpelier, "		12-31-01	120,000
Montpelier S. B. and Trust Co.....	Montpelier, "		12-31-01	106,000
Orleans Trust Co.....	Newport, "		1- 1-02	56,523
Richford S. B. and Trust Co.....	Richford, "		12-31-01	74,500
Proctor Trust Co.....	Proctor, "		6-10-02	41,500
Rutland Trust Co.....	Rutland, "		5- 1-02	99,151
State Trust Co.....	Rutland, "		12-31-01	100,000
Franklin Co. S. B. and Trust Co.....	St. Albans, "		1- 1-02	53,558
Citizens S. B. and Trust Co.....	St. Johnsbury, "		12-31-01	91,457
Lynchburg Trust and S. B.....	Lynchburg, Va.		12-31-01	215,000
Newport News Trust and S. D. Co.....	Newport News, "		12-31-01	50,000
Petersburg Bank and Trust Co.....	Petersburg, "		4-30-02	112,259
Radford Trust Co.....	Radford, "		5- 1-02	102,500
Richmond Trust and S. D. Co.....	Richmond, "		12-31-01	1,612,825
Virginia Trust Co.....	Richmond, "		12-31-01	604,507
South West Virginia Trust Co.....	Roanoke, "		6- 1-02	200,000
American S. B. and Trust Co.....	Seattle, Wash.		5- 1-02	50,000
Spokane and Eastern Trust Co.....	Spokane, "		4-30-02	100,000
Fidelity Trust Co.....	Tacoma, "		12-31-01	330,000
North West Loan and Trust Co.....	Kenosha, Wis.		12-31-01	60,965
Savings Loan and Trust Co.....	Madison, "		12-31-01	150,000
Wis. Fidelity Trust and S. D. Co.....	Milwaukee, "		12-31-01	125,000
Milwaukee Trust Co.....	Milwaukee, "		12-31-01	200,000

Wyoming None.

Wagener

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4 WOODWARD

The Maryland Constitution of 1851

SERIES XX

Nos. 7-8

JOHNS HOPKINS UNIVERSITY STUDIES

IN

HISTORICAL AND POLITICAL SCIENCE

(Edited 1882-1901 by H. B. Adams.)

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The Maryland Constitution of
1851

BY

JAMES WARNER HARRY

BALTIMORE

THE JOHNS HOPKINS PRESS

PUBLISHED MONTHLY

JULY-AUGUST, 1902

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JOHNS HOPKINS PRESS

The Lord Baltimore Press
THE FRIEDENWALD COMPANY
BALTIMORE, MD.

PREFACE

This monograph was undertaken at the suggestion of the late Professor H. B. Adams. Its purpose is to add one chapter to the constitutional history of Maryland: the period between the years of 1836 and 1851. The author is under obligations to many friends for their interest and their help; especially to Associate Professor J. M. Vincent and to Dr. Bernard C. Steiner of the Johns Hopkins University, who have assisted with many useful suggestions and corrections.

J. W. H.

Johns Hopkins University, June, 1902.

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THE MARYLAND CONSTITUTION OF 1851

INTRODUCTION

The original constitution of Maryland, framed at an early period of the Revolutionary War, remained for three-quarters of a century the fundamental law of the State, until it was superseded by the Constitution of 1851. At the time of its formation the constitution was well adapted to the wants and circumstances of the people. But the rapid growth of population, and the great commercial and industrial development of the State rendered necessary the alteration of the constitution then framed, so as to conform to social and economic progress.

Many of the more objectionable features of the constitution were amended or abolished. Among these changes were the abolition of the property qualification for the right of suffrage, and the repeal of the clause which prevented those who were conscientiously scrupulous of taking the oath from sitting in the General Assembly, or serving as a witness in criminal cases where capital punishment was involved. The electoral college for selecting the members of the Senate had been abolished, and the people had been given the right, with some restrictions, of electing their governor.

All of these changes in the constitution had been effected by successive acts of the General Assembly; but these alterations, so far from producing the desired result, had in many instances tended to destroy the harmony of the original instrument, and instead of improving had served to render it a "shapeless mass of unintelligible and contradictory provisions," so that in many of its features it bore little or no resemblance to the original constitution.

The question of a state convention to amend the constitution of Maryland had long been discussed in various parts of the State. Among those who were in favor of calling a convention to change the constitution there was considerable difference of opinion as to the proper mode of procedure. The 59th article of the constitution provided for its own amendment by the identical action of two successive legislatures, and the Declaration of Rights referring to that provision declared: "That this Declaration of Rights, or form of government to be established by this convention, or any part of either of them, ought not to be altered, changed, or abolished by the legislature of this State, but in such manner as this convention shall prescribe and direct."¹

The question was presented whether it was within the constitutional power of the legislature of the State by a simple resolution of that body, without first repealing the 59th article of the constitution, to call a convention to alter or amend the constitution and frame a new one. This very important question gave rise to considerable discussion concerning the rights of the majority and of the minority, and of the true intent and meaning of these clauses of the old constitution.

Many leading men of the State considered that, without the previous repeal of these articles of the constitution the very call of a convention would be an open act of revolution, and its action null and void, even if sanctioned subsequently by the popular approval. They considered that the General Assembly had no authority either directly to call a convention, or to take the vote of the people in reference to its call.² On the other hand it was argued by the advocates of what was then called "conventional reform," that there was, underlying the whole system of state government, a principle of acknowledged right in the peo-

¹ Md. Dec. of Rights, 1776, sec. 42.

² Report of Majority of Committee on Constitution, 1848.

ple to change their constitution in the manner in which a majority of the people desired. They claimed that, as the authority to change, alter, or abolish their form of government was guaranteed to the people in the Declaration of Rights,³ and that as a convention was neither prohibited by the constitution, nor the mode of its organization prescribed, the General Assembly could constitutionally provide for a convention.

The struggle between these two parties, representing roughly the agricultural and the commercial interests of the State, extended over a period of some twenty-five years. The agitation finally resulted in a call of a constitutional convention by the General Assembly, known as the "Reform Convention of 1850."

It is the purpose of the writer to trace the growth of the idea of "conventional reform" in the State. It includes the history of the Convention of 1850 and the character of the constitution which it gave to the people of the State for their ratification, or rejection.

³ Md. Const. of 1776, Dec. of Rights, secs. 1, 2, 4.

CHAPTER I

CONSTITUTIONAL REFORM AGITATION

The period of prosperity which succeeded the War of 1812 was marked by great industrial and economic changes throughout the American States. During this time the spirit of democracy diffused itself throughout the nation and produced many great and important changes in the political, social, and economic life of the people. It was a period characterized by the erection of schools, the extension of the right of suffrage, the construction of various works of internal improvement, and wild speculation. With this growth of democracy and the idea of popular sovereignty, there were many changes made in the constitutions of the several states to correspond with the social and economic conditions of the people. These changes were, for the most part, effected by constitutional conventions, elected directly by the people.

Conventions of such a character, prior to 1850, had been held in Massachusetts, New Hampshire, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Virginia, South Carolina, Georgia, and Missouri. These assemblies were called for constitutional purposes by the respective state legislatures, under the general legislative power, without the special authorization of their constitutions.¹ During the year of 1850 conventions for the purpose of amending or framing new constitutions were held in the following states, New Hampshire, Vermont, Michigan, Indiana, Ohio, Virginia, and Kentucky.²

With such precedents, a large portion of the people of

¹ Jameson's Constitutional Convention, p. 209.

² *Ibid.*, p. 533 et seq.

Maryland demanded of their legislature the right of meeting in a convention, elected by the people, for the purpose of amending their constitution. The legislature, defending itself behind the phraseology of the fifty-ninth article of the constitution, which prescribed for its own amendment by the identical action of two successive legislatures, resisted for some twenty years every attempt of the friends of constitutional reform to secure the calling of a convention.

Maryland, since the framing of the Constitution of 1776, had become a government of the minority. Within this period of seventy-five years, the economic and social conditions of the people had undergone a complete change. The city of Baltimore, at that time scarcely more than a village, had expanded into a great commercial city, numbering a population of more than a hundred thousand, and possessing one-third of the entire wealth of the State.³ The center of population had shifted from the Eastern Shore and the southern counties to the northern and western sections. With these changes there had been no corresponding change effected in the constitution. The smaller counties, though so unequal to the city of Baltimore and the larger counties in respect to population, still had the majority of representatives in the legislature, and foreseeing what demands would be made, if a convention was called for the purpose of changing the constitution by which their ascendancy in the legislature was secured, were opposed to every project of calling such a body. In 1836, when the popular mind was agitated more, perhaps, on this question of constitutional reform than in any other period of the State's history, the legislature had instructed a select committee to inquire into the expediency of making it high treason for citizens to conspire against the constitution of the State.⁴

The question of constitutional reform by means of a con-

³ U. S. Census, 1850.

⁴ Niles Register, 5th series, vol. 52, p. 73.

vention had long been agitated among the people of Maryland, and had been largely mixed with party movements and purposes. From 1820 to the Civil War the State was a close one in regard to the numerical strength of the respective political parties. In general the Whigs were stronger. As one party secured the control of the government, the other agitated the question of "conventional reform," as it was alleged, "to ride into office."

In the movement of 1835-36 for constitutional reform, which resulted in the radical amendments of the constitution of 1836, a portion of the people of the State were prepared to effect the proposed amendments without the aid of the legislature. Local conventions were held in several counties of the State urging the necessity of constitutional reform, and for the purpose of selecting delegates to a state convention to be held in the city of Baltimore in the spring of 1836. The purpose of this convention was to bring pressure to bear on the legislature in order to obtain the desired changes in the constitution. On the 6th of June, 1836, the State Reform Convention, composed of representatives from both political parties, assembled in Baltimore City. In this convention Cecil, Harford, Baltimore, Frederick, Montgomery, and Washington counties, and Baltimore City were represented. The convention adopted a set of resolutions recommending to the voters of the State not to support any candidate for the state legislature who did not pledge himself to introduce and support a bill in the legislature providing for taking the vote of the people on the question of reforming the constitution of the State. The convention resolved: "That if within forty days after the commencement of its session the legislature shall refuse or neglect to provide for ascertaining the sense of the people of the State upon this important question, and for calling a convention as prescribed in the previous resolutions, the president of the convention is hereby requested forthwith to convene this convention for the adoption of such *ulterior* measures, as may then be

deemed expedient, just and proper, as may be best calculated, without the aid of the legislature, to ensure the accomplishment of the desired results.”⁵

The legislature, coerced by the state of public feeling, and by the course pursued by the nineteen Democratic senatorial electors, who refused to qualify and meet the twenty-one Whig electors to elect the Senate,⁶ made many of the desired changes in the constitution. The persistence with which the nineteen “reform” electors pursued their determination of electing a senate composed of a majority in favor of reform, and the illegal and revolutionary manner in which they endeavored to bring about a convention for the purpose of forming a new constitution, produced a reaction throughout the State in regard to the calling of a convention. Public meetings were held in many of the counties, and in the city of Baltimore, condemning the course pursued by the “reform” electors as “disorganizing and revolutionary.”⁷ The changes made in the constitution by the “reform legislature” of 1836-37 served to check for a few years the demand for a constitutional convention.

The legislature in the effort to secure to Maryland the growing trade of the West, and with the view of developing the mineral resources of western Maryland, was induced to make use of the capital and credit of the State in the aid of various works of internal improvement. In the December session of the legislature of 1835-36, a measure was introduced to grant heavy subsidies to the various projects of internal improvement in course of construction. This measure was opposed in the legislature, and, with a view of enabling the members to learn the sentiments of their constituencies on the subject, was postponed until the extra session held in May.

⁵ Scharf’s History of Md., vol. iii, p. 189. See also Niles Register, 5th series, vol. 52, p. 124.

⁶ Steiner’s Electoral College, Amer. Hist. Association, Rep. 1895, p. 142.

⁷ McSherry’s History of Maryland, p. 351.

During this time a convention was held in the city of Baltimore at which delegates were present from the states interested. The subject of internal improvement was thoroughly discussed, and, in the language of Governor Lowe, "promises were made which created a wild delusion scarcely equalled by the dream of oriental imagination. The people were told that instantaneous wealth and power were within their grasp; that millions upon millions of public debts might safely be incurred as the returns of the investment would be certain and immediate; and that, for all time thereafter Maryland would be free from even the light burden which she had borne from the beginning; while from her exhaustless treasury, perennial streams of gold should flow bearing upon their bosom into the remotest section of the State the blessing of knowledge and refinement."⁸

The result was that when the legislature met in extra session in May, after a violent opposition, an appropriation of eight millions of dollars was made, which together with the appropriation already made, and those made two years later, involved the State in a debt of over sixteen millions of dollars.⁹ To meet the interest on this debt and gradually absorb the principal, excessive taxes were imposed upon the people. Violent opposition to the taxes was manifested in several places. In some of the counties anti-tax associations were formed declaring their inability to pay the tax. In Harford county open resistance to the law was made. When the collector of the tax attempted to sell some property on which an execution was levied for the payment of the state tax a mob chased him from the place of the sale, threatening to kill any one who should venture to bid.¹⁰ This condition of affairs, and the popular excitement caused by the financial embarrassment of the State brought

⁸ Gov. Lowe's Inaugural Address, June 6, 1851.

⁹ McSherry's History of Maryland, p. 368.

¹⁰ Niles Register, 5th ser., vol. 65, p. 354.

the subject of "conventional reform" again into prominence.

As the evils of having a constitution so completely in the power of the legislature became apparent in the extravagant use of the State's credit, it was seen that there must be some effectual check to prevent the legislature in the future from involving the State in financial ruin. Each succeeding election found the subject of constitutional reform a topic of increasing excitement and agitation, and augmented the number of those who advocated the calling of a constitutional convention. The subject came regularly before the legislature, and the governors in their messages to the General Assembly repeatedly called the attention of that body to the necessity of calling a convention.

The most important alterations in the constitution contemplated were: a change in the system of representation in the House of Delegates; limitation upon the power of the General Assembly to contract debts, or pledge the public credit; reduction in governmental expenses; the right to elect all local county officers; a reform of the judicial system, and especially a constitutional convention, elected directly by the people for the express purpose of framing a new constitution.

The rapid growth of population in the northern and western sections of the State, especially in Baltimore City, rendered necessary the reapportioning of representatives in the General Assembly. The smaller counties of southern Maryland, and of the Eastern Shore, fearing the preponderance of Baltimore City's influence in the legislature, fixed an arbitrary and unjust limitation upon her representation. Although with a population including considerably over one-fourth of the entire population of the State, the representation of Baltimore City embraced only about one-sixteenth of the total representation in the House of Delegates.

Representation in Maryland from colonial days down to 1836 had been based upon territory. In the year 1659 the

legislature organized into two separate branches, and the representation in the "Lower House" was made equal among the counties. In 1692 the legislature by law fixed the representation from each county at four. This equality of representation among the counties remained unaltered until the Revolutionary War.¹¹

In 1776, when the constitutional convention assembled to form a constitution for the State just emerging from colonial dependency, the system of equal representation of the counties was engrafted upon the constitution, and each county was given four delegates, and the town of Baltimore and city of Annapolis two each. In 1824 a constitutional amendment was passed by the legislature which gave Baltimore City four delegates, so as to place her representation on an equality with the counties; but it failed to be ratified by the succeeding legislature as the constitution required.¹² A similar amendment was made in 1835, but failed likewise to be ratified.¹³ By the amendment of the constitution in 1836, Baltimore City, Baltimore and Frederick counties were each given five representatives. The counties of Cecil, Kent, Queen Anne's, Caroline, Talbot, St. Mary's, Charles, Calvert and Allegany three; and the remaining counties four each.

After 1840, representation in the House of Delegates from the several counties was to be established on a given ratio, having federal numbers as its basis; but Baltimore City was limited to equal representation with that of the largest county, and no county was to have less than three representatives.¹⁴

In the judicial department of the State a complete reorganization was urged by the reformers. The appointing of the judges by the governor, and the tenure of office for good behavior, which was found to be in practice equal to

¹¹ McMahon's History of Maryland, vol. 1, p. 465.

¹² Act 1824, ch. 115.

¹³ Act 1835, ch. 98.

¹⁴ Act 1836, ch. 197, sec. 9.

a life tenure, were considered to be, as the phrase went, "contrary to the spirit of American institutions." In 1842 there were in commission twenty-one common law judges and a chancellor at an expense for their salaries of \$36,000 per annum. Governor Thomas in his message to the General Assembly in the same year declared that there was not a state in the whole Union, notwithstanding the fact that the population of several of the states was four times as great as that of Maryland, where the number of the law judges, and the amount of their salaries, were not less than those of Maryland. "Besides these objections," Governor Thomas continues, "another is that there are no effectual means provided for in the constitution to get rid of judges once commissioned as promptly as public interest may demand."

In 1844 the House of Delegates appointed a committee to take into consideration the advisability of reducing the expenses of the judicial system of the State, and of changing the tenure of office. In their report they showed that Maryland in 1840 paid for her judiciary the sum of \$41,500¹⁵

¹⁵ The State paid in 1840 in salaries the sum of \$36,100, as follows:	
Chancellor	\$ 3,400
Twelve associate judges of county courts.....	16,800
Five chief judges"""""	11,000
Chief judge of Court of Appeals.....	2,500
Chief judge of Baltimore City Criminal Court.....	2,400
	<hr/>
	\$36,100

In addition to the salaries thus paid from the treasury, the two associate judges of Baltimore City Court were paid by the city (\$1500 each).....	3,000
The judges of the sixth district (including Baltimore and Harford counties) received in addition to their salaries, in equal shares the amount of certain taxes on proceedings in the court, amounting to (\$800 each)	2,400
	<hr/>
Making a total of	\$5,400

See Report of Committee on Grievances and Courts of Justice, House Journal, March 5, 1844.

(excluding the salaries of the clerks, etc., etc.), while Massachusetts, with a population more than twice as great, and almost three times the extent of territory, was paying but \$25,750. The committee recommended the reduction of the number of judges; but not of their salaries.

In addition to the lack of authority claimed by the legislature, the fear of agitating the question of slavery in the State greatly increased the difficulties of securing legislative sanction for the call of a constitutional convention. That portion of the State which was deeply interested in slavery, jealously guarded that institution from both internal and external interference. It was feared that, if a convention assembled, with full power of framing a new constitution, the relation between master and slave might be changed. By an amendment of 1836, a provision was engrafted upon the constitution, declaring that the relation of master and slave in the State should not be abolished unless a bill for that purpose should pass by a unanimous vote of both branches of the General Assembly, be published three months before a new election, and be unanimously confirmed by both branches of the succeeding General Assembly after a new election. In event of slavery being abolished within the State, the constitution required full compensation to be made to the master for the value of his slaves.¹⁶

The dissension between the North and South arising over the settlement of the slavery question in the new territories acquired by the Mexican War, and the position of Maryland as a border State, rendered the southern counties more determined than ever to place around the institution of slavery those safeguards which should render it more secure from both internal and external violence. They considered that security could best be assured when they had a controlling voice in the government of the State. This predominant influence in the General Assembly they

¹⁶ Act 1836, ch. 197, sec. 26.

could no longer hope to retain if a convention, whose representation was based upon popular numbers, as was urged by Baltimore City, and the larger counties, assembled to frame a new constitution.

The distribution of slave property in Maryland was very unequal. The number of slaves was rapidly decreasing in the northern and western sections of the State, especially in those counties bordering on the free State of Pennsylvania. The proximity to a free State, and the consequent facilities for escape, rendered slavery almost impracticable, and slave property almost worthless. In southern Maryland, on the other hand, where agriculture was extensively carried on, and slave labor productive, the number of slaves was constantly increasing.

The southern planters had the greater part of their capital invested in this kind of property. This interest which they guarded with so much jealousy, and which formed so large a part of their wealth, might be destroyed and the wealth of the other part of the State scarcely feel the shock. These considerations led the people of the southern counties to believe it would be dangerous to them and to their interest to give the legislative authority into the hands of the people of the north and west, especially to those of Baltimore City, who were suspected of holding anti-slavery sentiments. This group considered that they were not concerned in sustaining the rights of the slave-owners. Though there were no public manifestations of a wish for the immediate abolition of slavery in the State, the tendency of the times and the action taken by the northern abolitionists were well calculated to increase the apprehensions of the slave-owners. This fear of agitating the question of slavery in the State was one of the principal causes for the legislature's resistance of the demands of the large majority of the people for a constitutional convention.

The financial embarrassment of the State, due to the failure of realizing the large returns which had been so confidently predicted from the works of internal improve-

ment, increased the agitation for "retrenchment and reform." This agitation arose paramount to all other issues. After the Stamp Tax law of 1844 was put in execution, which was the most objectionable among the many laws passed for the purpose of raising a revenue, and which was referred to as the "British Stamp Act,"¹⁷ the demands for a convention became general over the State.

On the 27th of August, 1845, a state reform convention, composed of delegates from several counties, was held in Baltimore City. The convention organized by the selection of Colonel Anthony Kimmel, of Frederick county, president; and George W. Wilson, secretary. A committee of five was appointed for the purpose of drafting a memorial to the legislature in behalf of the convention in favor of "conventional reform." It was decided to establish a permanent central reform committee, consisting of ten members from the city of Baltimore, and five from each county, for the purpose of "securing the great object of retrenchment and reform." The convention adopted a set of resolutions without a dissenting voice. Among which were:

"*Resolved*, That it be recommended to all the election districts in the State to organize reform associations, and to appoint corresponding committees, whose duty it shall be to report to the central committee all information that they may collect with regard to the progress of reform principles, and suggest such measures as may be deemed advisable to advance the cause in their several districts."

"*Resolved*, That it be recommended to the people throughout the State to give their votes to no candidate for either branch of the legislature who will not pledge himself to vote for the call of a convention; the abolition of all useless offices, and the retrenchment of all unnecessary expenses."

"*Resolved*, That we consider any apprehension that, in

¹⁷ Scharf's History of Maryland, vol. iii, p. 212.

a convention assembled to form a new constitution to be submitted to the people for ratification, there is danger that the slavery question might be agitated to the prejudice of the quiet and happiness of the public, as altogether visionary; and as implying injurious and unfounded doubts of the good sense and sound principles of the people; that we believe the views of all classes of our citizens on the subject are sound, and that the State is more dishonored by the intimation of doubts with regard to it, than she could be by any agitation of the question that would be likely to take place in a convention.”¹⁸

When the legislature assembled in December, 1845, a bill was introduced in the House which provided for taking the vote of the people of the State upon the question of calling a constitutional convention. Petitions were received from the several reform organizations of Maryland, praying for the passage of the bill. The majority of the committee to whom the petition and bill were referred, reported that under the present form of government the legislature had no power to call a convention, and that whatever amendments were necessary, could be made by the legislature in the manner prescribed by the constitution. The minority of the same committee reported that under the Declaration of Rights, and the constitution of the State, the legislature did have the power, and it was its duty to do so at the present session. After a violent debate between the members from the smaller counties on one side, and the representatives from the larger counties and from the city of Baltimore on the other, the bill was lost by a tie vote.¹⁹

When a new legislature was elected in 1847, the subject was again introduced in the House. The committee in their report deplored the idea of agitating a question of such moment when the State was involved in financial

¹⁸ Niles Register, 5th ser., vol. 68, p. 405.

¹⁹ House Journal, December session, 1845.

embarrassment of the most serious character, and requested that the whole discussion might be postponed until its agitation could exercise no injurious influence upon the credit of the State. That "conventional reform" would be a violation of the constitution, subversive of the interest of the smaller counties; and an abridgment to the rights of the minority.²⁰

In the gubernatorial canvass of 1847, the Democratic party nominated Philip Francis Thomas of Talbot county for governor. Mr. Thomas's opinion on the question of a constitutional convention was so well known that he was presented as the standard bearer of the "reform party," whose motto was "reform, retrenchment, and convention."²¹ The leaders of the reform movement entreated the people to lay aside all party prejudices and act independently of party affiliations in order to secure Mr. Thomas's election. They urged the counties to select their tickets for the General Assembly with direct reference to this question of "conventional reform," which had become paramount to all other questions. The Whigs, as a party opposed to the calling of a convention, nominated Mr. William Goldsborough for governor in opposition to Mr. Thomas. Active canvass of the State was made by both parties. Excitement ran high, and invectives were used to a considerable extent on both sides.

The Whigs characterized their opponents as "sycophants" and "parasites," "who pander to the prejudice and interest of the larger counties in hope of lucre."²² The Democrats returned the abuses with equally opprobrious terms. Mr. Thomas was elected governor by a majority of 709 votes; while the Whigs had the majority in both branches of the General Assembly. The friends of "conventional reform" were again destined to disappointment. The legislature refused to pass an act authorizing

²⁰ Report of Majority on Constitution, Dec. session, 1847.

²¹ Easton Star, July 27, 1847. ²² Easton Star, October 12, 1847.

a vote of the people to be taken upon the subject of a constitutional convention, claiming lack of authority and power to enable them to do so.

These repeated refusals of the legislature to call a convention; or to take the vote of the people in reference to its call, made the reform party more determined than ever to secure a convention with, or without, the aid of the legislature. Accordingly the leaders of the reform party throughout the State began early in the spring of 1849 a more violent agitation than ever on this all-absorbing question of "conventional reform." Local conventions were held in several counties, and delegates were selected to meet in a state reform convention to be held in the city of Baltimore. One of the first of these county conventions was held in Westminster, on the 9th of June. In this gathering addresses were made by several prominent men of the county, earnestly recommending prompt and judicious action with a view to a thorough reform in the constitution of the State by a convention. Among the defects of the constitution comprised in the resolutions adopted were: its liability to be changed at the caprice of the legislature; the inequality of representation in the Senate; the life tenure of the judiciary; the lack of constitutional check upon the legislature in the expenditures of the public money, and as a grievance, that the legislature had failed to meet the wishes of the people in granting constitutional reform.²³

The Worcester county reform convention met at Snow Hill on the 10th of July. The complaints made against the government of the State in the convention were, excessive taxes, both direct and indirect, and no constitutional check placed upon the legislature in the expenditure of public money. The convention selected ten delegates to attend the state reform convention to be held in Baltimore city.²⁴ Similar conventions were held in several

²³ Westminster Democrat, June 11, 1849.

²⁴ Baltimore Sun, July 16, 1849.

counties. Resolutions were adopted with the view of obtaining constitutional reform, and delegates were selected for the state reform convention.

In some of the county conventions there was a division of opinion as to whether the reforms in the constitution should be made by a convention; or by the legislature of the State. Generally the southern counties and those of the Eastern Shore were opposed to the convention. They considered a convention would be dangerous to their rights and privileges guaranteed in the constitution. The Democratic candidates for the legislature in Frederick county issued a card pledging themselves not only to vote for, but to use every honorable means to secure the passage of a bill in the legislature, providing for the call of a convention. They declared that "we hold that the 59th article of the constitution is not, and was not intended to be other than a restriction upon the legislature; and that the people cannot be curtailed of their sovereignty by constitutional provisions, nor by legislative enactments."²⁵

The delegates from the several county conventions, composing the state reform convention, assembled in Baltimore City, July 25, 1849. Represented were Washington, Frederick, Carroll, Baltimore, Harford, Caroline, Worcester, Somerset, Montgomery, Baltimore City and Howard District.²⁶ The convention was organized by selecting Col. John Pickell of Baltimore City president, and Beale H. Richardson, Esq., secretary. Two days were consumed in discussing the proposed reforms, and the methods most likely to bring the legislature to provide for a constitutional convention. On the second day the following preamble and resolutions were unanimously adopted:

"Whereas, The people of Maryland, through their representatives from many of the counties, districts, and city of Baltimore, have called this convention together to declare

²⁵ Baltimore Sun, September 8, 1849.

²⁶ Baltimore American, July 26, 1849.

and express for them their views and determinations in relation to the reform of their constitution, and in primary meetings have appealed to all men in Maryland, without distinction of party to rally now upon this important and vital question; and as in most, if not in all of the States of this Union, the people by a convention of delegates selected for their patriotism and wisdom, have assembled, and after calm and mature deliberation amended, remodeled, or reformed their old constitutions (however admirable and appropriate at the period of their formation), and adapted them to the changed conditions, growing power, and the irrepressible progress of more enlarged spirit of improvement and the fuller lights which practice and experience have bestowed; and as it is desirable that a work of such importance, and so allied with the feelings and interests of the people themselves, should be commenced, pursued and completed in a spirit of harmony and union, and that all minor questions, whether of Federal or State policy should be omitted, to attain for the people the great blessings of reform of their constitution, which they alone are competent to make, most beneficially to themselves, by the means of a convention, which shall be composed of delegates directly elected by, and immediately responsible to the people of this State."

"*Resolved*, That this convention, constituted as it is of delegates appointed from the counties, districts and city of Baltimore here represented, do, in behalf of the people of Maryland whom they represent, declare that it is their wish as it is their fixed determination to have a full and thorough reform of the constitution of Maryland, by a convention, so far as their votes and efforts can attain this desired object."

"*Resolved*, That the legislature possesses the power, and should call a convention at their next session, in obedience to the manifest and expressed will and wishes of the people, to reform the constitution of the State."

"*Resolved*, That in evidence of our sincerity in the prem-

ises, we the members of this convention, mutually pledge ourselves, one to the other, that we will cast our vote for no candidate for a seat in either branch of the legislature of Maryland, who is not fully committed and pledged to vote for a bill providing for an immediate call of a convention to revise the present constitution; and that we commend this course to the friends of conventional reform of all political parties throughout the State. That this convention also recommends the formation of reform committees and clubs in every county, district and city in the State, for the purpose of urging on the great work of conventional reform."²⁷

These recommendations were vigorously carried out by the local reform organizations of the several counties of the State, and of the city of Baltimore, in order to secure the election of delegates favorable to "conventional reform." The Democratic party of the State was almost unanimously in favor of a convention; while the Whigs in the different sections were divided in regard to it. The Whigs of Carroll county held a convention at Westminster on the 18th of August, and took decided grounds for "conventional reform." They declared that the legislature had the power to call a convention of the people, and pledged themselves to support no candidate unless he announced himself in favor of the convention.²⁸ The Whig voters of Baltimore City in a convention of delegates appointed from the different wards of the city adopted similar resolutions.²⁹ The Whigs of the southern counties and of the Eastern Shore were opposed to a convention. The Rockville, Md., *Journal*, speaking of the convention held there for the purpose of selecting delegates to the state reform convention in Baltimore City, stated, that "No Whigs attended the meeting, and so far as we know, there is not a conventional Whig reformer in the district."³⁰

²⁷ Baltimore American, July 27, 1849.

²⁸ Baltimore Sun, August 24, 1849.

²⁹ Baltimore American, August 31, 1849.

³⁰ Quoted from the Baltimore Sun, July 31, 1849.

The result of the election of 1849, gave the Whigs a majority of twelve in the House, and nine in the Senate. Governor Thomas in his message to the General Assembly, January 1, 1850, plainly told that body that the large majority of the people of the State were in favor of a convention, and unless the wishes of the people in that behalf were gratified the sanction of the legislature would not much longer be invoked.

The subject of the constitution was one of the first to be considered by the House. A select committee was appointed to inquire into the expediency of calling a convention, and to provide a bill to carry it into effect. Petitions were received from various parts of the State in favor of a convention. On the 15th of January, Mr. Biser of Frederick county, who was known in the Convention of 1850 as the "Father of reform," made a majority report favorable to a convention. The report was signed by only three of the seven members of the committee. The committee admitted that the constitution, as it then stood provided that the legislature had the power to change the constitution of the State; but denied that that power was exclusively in the hands of the legislature. They asserted that the majority of the people also had the power to amend or abolish their constitution when they so desired. The committee showed that by the report of a similar committee in 1847, there were placed upon the records of the legislature, views and arguments, which, if historically or legally correct, would leave no other remedy to the majority of the people, should they demand a convention, than a revolution.

The report claimed that the legislature had a precedent in taking the vote of the people upon the question of invoking a convention by the act of 1846, which submitted to the vote of the people of the State the proposed amendment of the constitution, requiring in the future biennial instead of annual sessions of the legislature, and which was sustained by a majority of the voters. The committee

considered that there was ample reason for asserting that the vote could be constitutionally taken upon the propriety of holding a convention, and reported a bill to that effect, with provisions to put it in execution.³¹

On the 16th of January, Mr. Causin of Anne Arundel county, from the same committee submitted a minority report, denying the constitutional authority to submit to the vote of the people a proposition relative to a call of a convention. The report was also accompanied by a bill, which provided for the repeal of the 42nd article of the Declaration of Rights,³² and the 59th article of the constitution.³³ If the act for the repeal of these articles of the constitution should be confirmed by the succeeding legislature, then it would be lawful for the legislature to call a convention of the people, to reform or make a new constitution.³⁴

To secure the sanction of the legislature for a convention, it was seen that a compromise must be made between the different sections of the State. Baltimore City and the larger counties maintained that representation in the convention should be apportioned among the counties and city of Baltimore according to population. The Eastern Shore and the smaller counties considered that all necessary changes in the constitution could be made by the legislature, and that their rights and interest would be put to hazard by a convention, having population as the basis of representation. They required, if such a convention should be called, a vote of two-thirds of the convention to pass any constitutional provision touching the interest of the people of the Eastern Shore,³⁵ as guaranteed to them by the constitution.

The radical reformers were unwilling to consent to the delay and uncertainty of the succeeding legislature confirming the amendments proposed by the report of the mi-

³¹ Report of Majority on Constitution, January 15, 1850.

³² See p. 10.

³³ *Ibid.*

³⁴ Report of Minority on Constitution, January 26, 1850.

³⁵ House Journal, January 7, 1850.

nority of the committee. They demanded the immediate enactment of a law authorizing the vote of the people to be taken upon the question of a convention. After considerable opposition, the bill reported by the majority of the committee, but slightly amended, was passed by the House by a vote of forty-three to thirty-five; and the Senate without amendment or debate, except to a question of postponement, passed the bill by a vote of eleven to seven. The representatives from the following counties voted unanimously to submit the bill to popular vote: Baltimore, Harford, Cecil, Talbot, Frederick, Washington, Allegany, Carroll and Baltimore City. The counties of St. Mary's, Calvert, Charles, Dorchester, Queen Anne's, Worcester and Kent voted unanimously against the bill. The remaining counties were divided in their vote.³⁶ The *Baltimore Sun* of May 7, 1850, in an editorial states "That it was not until the popular sentiment turned very decidedly towards a convention independent of the legislature, that the convention was granted; and so decisively had this purpose taken hold of the popular mind that there was some disappointment when the Senate passed the bill."

The convention was to have complete power of framing a new constitution, except that it was prohibited from changing the relation of master and slave as then established and sanctioned by the constitution. The act also provided that the new constitution should be submitted to the people for their ratification or rejection on the first Wednesday in June, 1851. The representation in the convention to be the same as each county and the city of Baltimore then had in both branches of the legislature.³⁷

The reform party did not rest with their success in the legislature, but endeavored to secure the adoption of the measure by the people. In Baltimore City a large meeting was held without distinction of party on the 18th of April. Addresses were made by several prominent reformers,

³⁶ House Journal, February 16, 1850.

³⁷ Act 1849, ch. 346.

urging the people to cast their ballots for the convention. The banners displayed bore in large letters the motto: "A long pull, a short pull, and a pull together."³⁸ Similar meetings were held in several parts of the State.

The vote in regard to a convention was taken on the 8th of May. The ballots were marked thus—"for a convention," and "against a convention." A majority of 18,833 votes were cast in the State for a convention. In Baltimore City the aggregate vote cast was very small, only some 8500 voters went to the polls, and of these only 376 voted against the convention. The following counties voted against the proposition: Prince George's, Dorchester, Charles and St. Mary's. Somerset county voted for a convention by a majority of six votes.³⁹ The election for delegates was held on the 4th of September, and on the 4th of November, 1850, the convention assembled in Annapolis.

The fact that the articles of the constitution which gave to the legislature the power to propose and make amendments were not repealed, gives the convention a revolutionary or extra-constitutional character.

³⁸ Baltimore American, April 19, 1850.

³⁹ See Appendix, p. 85.

CHAPTER II

THE CONVENTION

The year 1850 was one of profound excitement throughout the United States. The slavery question was now agitating the country from one end to the other. The dispute about freedom in the new territories acquired by the Mexican War aroused sectional animosities and secession threatened. The article of the constitution and the laws of Congress providing for the recapture of fugitive slaves had been repeatedly disregarded, or set at defiance.

The government of the State of Maryland at that time was in the hands of the Whigs, who represented the agricultural and conservative element of the people. Although the Whigs were in the minority in respect to popular numbers, they were enabled, by the system of representation recognized by the constitution of the State, to have a majority in the General Assembly.

Representing the agricultural interest of the State, the Whigs, as a political party, were opposed to a constitutional convention. They were reluctant to surrender any portion of their relative influence in the state legislature to the growing population of the northern and western sections of the State, especially to the rapidly increasing population of Baltimore City. Self-protection, they considered, demanded the retention of the state government in their own hands.

It was not until revolution threatened the State that the counties of southern Maryland and of the Eastern Shore, through their representatives in the General Assembly, consented to submit to the voters of the State a proposition relative to a call of a constitutional convention.

The peculiar geographical features of Maryland are such that the State is divided into sections whose interests have always been regarded as opposed to each other. Sectional jealousy was particularly strong before the Civil War. The Eastern Shore and southern Maryland had some interests in common; both were agricultural districts, and both were deeply interested in the maintenance of the institution of slavery within the State. The number of slaves was increasing in the southern counties of both the Eastern and Western Shore. The number of slaves in three of the counties: Prince George's, Calvert and Charles, exceeded the number of whites.¹

On the Western Shore the city of Baltimore was clamoring for greater political power. The city's representation in the General Assembly of the State was limited to equal representation with that of the largest county, though with a population more than four times as great. The rapid growth of population of Baltimore City, and her great commercial expansion; while producing a sense of pride among the inhabitants of the agricultural districts, filled them with alarm for their own political influence in the government of the State, and thereby the control over the institution of slavery. This alarm was greatly increased by the relative decrease of slave population in the northern and western sections of the State.

The commercial interest of Baltimore City was not deeply concerned in the maintenance of slavery in the State, because the employment of slaves in commercial pursuits was not considered to be profitable.

The sectional jealousy of the two Shores was greatly increased by the system of internal improvement, which was financially aided by the State. For advancing its commercial interest, the small State of Maryland had become indebted to the extent of over sixteen millions of dollars. The citizens of Baltimore City were the real promoters

¹ U. S. Census, 1850.

of the plan of state aid to canals and railroads; in this they were supported by the people of western Maryland who were interested in finding a market for their agricultural and mineral products.

The failure of the works of internal improvement to pay interest on the bonds guaranteed and issued by the State, compelled the government to resort to heavy taxation. The people of the Eastern Shore bitterly complained of being heavily taxed for the benefit of the Western Shore and Baltimore City. Intersected by rivers and creeks, the Eastern Shore did not require works of internal improvement to develop her resources. The people of the Eastern Shore regarded the Chesapeake and Ohio canal, and the Baltimore and Ohio railroad as injurious rather than beneficial to her agricultural interest. They brought into competition with her products the products of the great West.

It was amid these political and economic conflicts of interest within the State, and amid the agitation concerning slavery in the whole country, that the Maryland constitutional convention assembled in Annapolis on the 4th of November, 1850.

In the convention were many of the leading men of the State; men of wide political knowledge and experience. Among the more prominent members and those who took a leading part in the debates were ex-Governors Samuel Sprigg and William Grason. Hon. T. H. Hicks, afterward war governor of Maryland, through whose efforts Maryland was prevented from seceding from the Union, United States senators Edward Lloyd, of Talbot county, William D. Merrick, of Charles county, and David Stewart of Baltimore City. Others who were prominent in the convention were Hon. John W. Crisfield, of Somerset county, a representative in the Thirtieth and the Thirty-seventh Congress of the United States, and one of the ablest lawyers of the State. Alexander Randall, of Anne Arundel county, a representative in the Twenty-seventh

Congress, Charles J. M. Gwinn, of Baltimore City, a prominent lawyer of the State, and several others of distinguished ability. The total number of members of the convention was one hundred and three. Politically there were fifty-five Whigs and forty-eight Democrats.

The convention was temporarily organized by the calling of Col. Benjamin C. Howard, of Baltimore county, to the chair, and James L. Ridgely, of the same county, was appointed secretary.

Elements of discord abounded in the convention. Party feeling was very strong, and perhaps to this cause may be attributed in a great measure the difficulties and differences which were encountered in the progress of the session. An entire week was consumed before the convention was able permanently to organize, owing to political division and sectional jealousy.

The candidates for the presidency of the convention were Hon. John G. Chapman, of Charles county, Whig; Col. Benjamin C. Howard, Democrat; and William C. Johnson, of Frederick county, independent Whig. After eight days of various attempts to elect a president, during which time caucuses were held by both parties to instruct their members as to what compromises would be accepted and what required, Mr. Chapman, the Whig candidate was chosen permanent president. He was a conservative reformer, and had voted against the call of the convention.

On taking the chair Mr. Chapman said that venerating as he always had done, the characters of those wise and patriotic men, who in 1776 formed the first republican constitution of the State, he had witnessed with a distrust, which he never desired to conceal, the efforts that had been made to change its provisions.² George G. Brewer, of Annapolis, was made secretary to the convention.

Nineteen standing committees were appointed by the president to prepare and bring business before the con-

² Baltimore American, November 16, 1850.

vention. The most important committee was considered to be that on representation. Other committees to which great importance was attached were those on the legislative department; the committee on the judiciary, and the committee on future amendments. The president of the convention in appointing the various committees had strict regard to the different sections of the State.

Early in its session the convention had appointed a select committee to draw up resolutions in reference to the recent compromise measures adopted by the United States Congress. On the 10th of December, 1850, the select committee reported a series of resolutions, which were unanimously adopted.

These resolutions declared that the constitution of the United States had accomplished all the objects—civil and political—which its most sanguine framers and friends anticipated. That a proper appreciation of the blessings which that instrument had brought to the country would lead every state in the Union to adopt all measures necessary to give complete effect to all provisions of the constitution, or laws of Congress intended for the protection of any portion of the Union.

They declared that the several acts of Congress, namely: those relating to the admission of California as a free state; to the territorial governments of Utah and New Mexico; to the prohibition of slave trade in the District of Columbia, and to the reclamation of fugitives from labor, did not, to the extent they desired, meet the just demands of the South. But in order to heal the public agitation and perpetuate the Union, the acts of compromise received their acquiescence. They declared that of the series of laws passed by Congress that intended to insure the restoration of fugitives from labor was the only one professing to protect the peculiar rights and institution of the Southern states from the “mischievous hostility of a wicked fanaticism” in the North. The fugitive slave law was but a “tardy and meagre measure of compliance with

the clear, explicit and imperative injunction of the constitution." The provisions of that law could not be violated or deliberately evaded without leading to a dissolution of the Union."³

Copies of the above resolutions were sent to the executives of several states. Governor Collier of Alabama in acknowledging the receipt of the resolutions said that Maryland had spoken frankly and patriotically, and that the South would be true to the Union so long as the "sacred charter of our rights was respected and honored, and the general government manifested a willingness and ability to enforce the law made for the protection of the South."⁴

Similar resolutions were adopted by the citizens of Frederick county. These resolutions declared emphatically that the fate of the Union depended upon the future conduct of the North.⁵ The convention expressed also its great admiration for the eminent statesmen "who, rising above the influence of party and sectional considerations, periled their well-earned reputations for the enduring welfare of their country."

On the 25th of March, 1851, the convention entertained at dinner the Hon. Daniel Webster. Mr. Webster took a leading part in defense of the compromise measures in the United States Senate,⁶ and was honored by the people of Maryland as "the ablest defender of the Union." Amid speech-making and toast drinking the attachment and loyalty of Maryland to the Union was proclaimed.⁷

The subject of apportioning representation in the General Assembly among the several counties and Baltimore

³ See Resolutions, *Baltimore American*, December 12, 1850.

⁴ Debates of Convention, vol. i, p. 384.

⁵ See *Baltimore American*, November 18, 1850.

⁶ See Webster's Speech, 7th March, 1850; Webster's Works, vol. 5, p. 324.

⁷ See Pamphlet, "Dinner given to Hon. Daniel Webster by the Md. Reform Convention, 1850."

City was one of the first to be considered by the convention, and one of the last to be disposed of. To many this took precedence over all issues before the convention. It was the most difficult and embarrassing question upon which that assembly was called to act. The issue was between the smaller counties of southern Maryland and of the Eastern Shore on the one hand, and Baltimore City and the larger counties which claimed representation according to population on the other. The smaller counties were generally willing to give representation according to population to the counties, but desired to restrict the representation of Baltimore City to equal representation with that of the largest county, or giving the city the same representation as was agreed to in 1836. The city of Baltimore and the counties which were prominent in wealth and population protested against the injustice of the smaller counties controlling the state legislature. The smaller counties having a majority in the legislature under the old constitution insisted that they would never surrender the rights and privileges which that constitution conferred upon them. Under the constitution of 1776 the people of the Eastern Shore enjoyed certain privileges, among which was that no constitutional amendment could be made touching the interest of the Eastern Shore without a two-thirds vote of all the members of two successive General Assemblies, requiring only a majority vote for the rest of the State.⁸

This provision was the result of a compromise between the Eastern and Western Shores at the time of the formation of the original constitution. The smaller counties of the Eastern Shore and southern Maryland having the majority in the legislature practically held control over the institution of slavery and the public treasury. This power they were determined not to yield to the larger counties and especially to the people of Baltimore City.

⁸ Constitution 1776, art. 59.

Under these circumstances it was seen that a compromise was necessary between the contending parties and their interests to secure a new constitution. The act itself, by which the convention was called, was a virtual acknowledgment that the constitution to be framed should be a work of compromise on the subject of representation, since it fixed the representation in the convention. Each county and Baltimore City was given the same number of representatives as they then had in both branches of the General Assembly.

The majority of the members were hampered in making compromises by the instructions given by their constituencies. These instructions were generally of such a character as to give to certain parts of the State some superior advantage, or prevent a reduction of their relative influence in the future legislatures.

Closely connected with the subject of representation was that of slavery, the only subject upon which the convention was unanimously agreed. Mr. Presstman, of Baltimore City, had anticipated the representatives of the counties more particularly interested in slavery, and submitted a proposition providing that the legislature should have no power to abolish the relation between master and slave as it then existed in the State,⁹ and that the committee on the legislative department be instructed to report a bill to that effect.¹⁰ This was regarded as a decided advance in the way of conciliation on the subject of representation, since it came from the part of the State where no great interest in slavery was felt; and a reciprocal concession was expected in return from the southern counties in regard to representation.

The southern counties were considering not only the immediate protection of slavery within the State, but the future, when the institution of slavery would be practically confined to southern Maryland. At the present rate of

⁹ See chap. i, p. 20.

¹⁰ Debates, vol. i, p. 113.

decrease they considered that it would be only a few years until slavery would have entirely disappeared from the northern and western counties. They refused to compromise in any manner that would lessen their influence in the General Assembly.

The committee on representation consisted of nine members, representing Charles, Baltimore, Kent, Carroll, Talbot, Somerset, Washington, Anne Arundel counties and Baltimore City. The committee was unable to agree upon any plan of apportionment.

On the 11th of December, Mr. Merrick, of Charles county, chairman of the committee on representation made a negative report as follows:

(1) "*Resolved*, That it is expedient to regard federal numbers in finding the estimates and basis of representation in the House of Delegates."

(2) "*Resolved*, That it is inexpedient to adopt a principle of representation based exclusively upon popular numbers in organizing the House of Delegates or the Senate."¹¹

Several of the members of the convention desired the whole subject of representation to be postponed until the convention had made further progress in making the constitution. They considered the question of representation was one to which more importance was attached than to any other upon which the convention would be called to act.

The delegates from Baltimore City consisting of Messrs. Presstman, Gwinn, Brent, Stewart, Sherwood, and Ware were opposed to referring the subject again to the committee in any form, and desired the whole subject of representation to be discussed in the convention as a whole, without the intervention of the committee. After several attempts to recommit, the whole subject was laid upon the table.¹²

¹¹ Debates, vol. i, p. 106. The term "federal numbers" meant the congressional ratio of 1 free to 3/5 slave population.

¹² Debates, vol. i, p. 137.

The first part of the report that federal numbers should be used in finding the basis of representation was not approved by the majority of the convention. Federal numbers had been recognized in Maryland for the first time, in an amendment of the constitution in 1836. It was the result of a compromise based upon federal numbers and territory. According to this one senator was elected from each county and Baltimore City, while representatives followed the federal ratio of population.

If federal numbers had been taken as a basis for representation, it would have deprived southern Maryland of a large part of her population in representation. In Baltimore City there were less than three thousand slaves, while her free-negro class numbered nearly twenty-five thousand.

As free negroes were to be counted as whites, though having no political rights, federal numbers would have reduced the southern counties' representation unduly. In Prince George's and Charles counties the slave population exceeded the number of whites and free negroes combined. In addition Baltimore City had a large alien population, which, on the basis of federal numbers, would be made equal to citizens in the counties, where the population almost exclusively consisted either of native-born, or of naturalized citizens.

Federal numbers in apportioning representation in the Congress of the United States was the result of a compromise between the slave and the non-slave states. It provided that taxation and representation should be apportioned equally. The slave-holding states received as a compensation for the non-enumeration of a portion of their slaves in the apportionment of representation, an exemption to the same extent from taxation.

In Maryland there was no such compensation or equivalent exemption proposed, or contemplated. The effect of adopting federal numbers as a basis for representation would have been to throw the loss occasioned by slavery,

on the particular portion of the State in which slaves were most numerous.

In regard to the second part of the report that population alone could not be taken as the basis of representation in the House of Delegates there was a division in the convention. There was both a sectional and a political interest against recognizing population as the basis of representation; sectional, because it would have thrown the smaller counties in the minority in future legislatures, and political, because it would have given the State to the Democrats. This latter event the Whigs, who were in the majority, were determined to prevent.

There were two views held in the convention in regard to representation between which a compromise had to be made. The first was in favor of a system of representation on a population basis for the whole State. The second favored representation on the basis of population for the counties; but restricted Baltimore City to a representation equal to that of the largest county.

In some of the southern counties during the contest for seats in the convention, the question of secession was discussed.¹³ It was decided in event of population being taken as the basis of representation in the General Assembly of the State, that there should be engrafted on the new constitution a provision, which would enable the Eastern Shore and southern Maryland to secede peaceably from the State, and unite with Delaware or Virginia. The time of secession was to take place whenever the interest of these sections seemed to require it.

For this purpose Mr. T. H. Hicks, afterwards governor of Maryland, offered an amendment to the Declaration of Rights providing, "That any portion of the people of this State have the right to secede, and unite themselves and the territory occupied by them to such adjoining State as they shall elect."¹⁴ One of the members of the conven-

¹³ Debates, vol. i, p. 156.

¹⁴ Debates, vol. i, p. 150.

tion humorously offered an amendment to the above by adding, "provided we can get any State to accept us."

This attempt of the Eastern Shore to secede from the Western Shore was not a new feature in the history of Maryland. The prevalence of shore jealousy was very strong in the convention which framed the constitution of 1776. A proposition was then made in that convention to insert an article in the Declaration of Rights, acknowledging the right of either shore to separate from the other whenever their interest and happiness so required. This proposition in the convention of 1776 received the support of sixteen out of the twenty-one members from the Eastern Shore.¹⁵

The amendment offered by Mr. Hicks was lost by a vote of fifty-one to twenty-seven.¹⁶ It received the support of fifteen out of the twenty-seven votes cast from the Eastern Shore. The counties of Dorchester and Worcester voted unanimously for secession. Queen Anne's county cast a solid vote against it, and the other counties of the Eastern Shore were divided in their vote.¹⁷ Mr. Hicks made a second unsuccessful attempt to have his amendment adopted when the convention was considering future amendments.¹⁸

It was the deep interest in the maintenance of slavery in the southern counties of both shores that caused those sections of the State to view with alarm the demands of Baltimore City and western Maryland for representation based on population.

A provision was placed in the constitution intended to remove the apprehensions of the southern counties in regard to the protection of slave property, by prohibiting

¹⁵ McMahon's History of Md., p. 466.

¹⁶ Debates, vol. i, p. 156.

¹⁷ Mr. Hicks, a number of years later, declared that he had introduced the resolutions, not to declare an "inherent right," but to give the people an opportunity to vote on the question. [See Radcliffe: Governor Hicks of Maryland and the Civil War, p. 13, note.]

¹⁸ Debates, vol. ii, p. 851.

the legislature from altering the relation of master and slave as then existed in the State. The representatives from the southern counties had no faith in a constitution, especially since the old constitution had been abolished by a *revolutionary* act.¹⁹ They did not consider themselves secure unless they had the controlling influence in the government of the State in their own hands.

When the final vote was taken on the popular basis of representation for the whole State, only seventeen votes were cast in its favor, and sixty against it.²⁰ Baltimore City and Frederick county cast a solid vote for the popular basis; Baltimore and Carroll counties three each, and Harford county one. The remaining counties cast a solid vote against the proposal.

The committee after a long deliberation and comparison of views, found it impossible to concur by a majority in any plan of representation. On the 15th of February, Mr. Merrick, with the permission of the committee, submitted a plan for consideration. The report was not one in which the committee concurred. It was for the purpose of bringing the subject before the convention that the committee authorized the report to be made.

The plan submitted by Mr. Merrick gave Baltimore City two more delegates than the largest county in the House of Delegates; the members to be chosen annually. The Senate was to be composed of twenty-two senators elected for a term of four years. One senator from each county, and two from Baltimore City; but the city was to be divided into two senatorial districts and nine electoral districts, for the purpose of electing members to the House of Delegates. Each district was to elect one member.²¹ The proposition to district Baltimore City, as has been done since, was advocated by the Whig voters of the city, who were in the minority.²²

¹⁹ See ch. i, p. 32.

²⁰ Debates, vol. i, p. 122.

²¹ Debates, vol. i, p. 285.

²² Baltimore American, November 20, 1850.

There were two minority reports made from the committee on representation; one by Mr. Lloyd, of Talbot county (a Democratic district), giving to Baltimore City five more delegates than the largest county and equal representation in the Senate.²³ The second minority report submitted by Mr. Chambers, of Kent county, was the same plan adopted in 1836 in all respects, except that it adopted the aggregate population as a basis instead of federal numbers.²⁴ All of these plans for a basis of representation were rejected by the convention.

There were several compromises offered, but none upon which the convention could agree. Baltimore City was willing to compromise on a territorial basis in the Senate; but claimed popular representation in the House of Delegates. They considered this would be a sufficient check to prevent any legislation detrimental to the counties.

The plan of representation, which received the greatest attention and support was known as the "Washington county compromise." It was introduced by Mr. Fiery of that county. The plan was based on federal numbers. If adopted, it would have given Baltimore City four more delegates than the largest county.²⁵ This compromise was rejected, afterwards reconsidered, and finally lost by a vote of forty-seven to forty-six.²⁶

The question of apportioning representation was finally disposed of April 1. The plan was introduced by ex-Governor Grason, of Queen Anne's county,²⁷ subsequently amended so as to give Baltimore City one additional representative, and finally adopted by a vote of forty-three to forty.²⁸ Representation in the House of Delegates was apportioned among the counties on a population basis; Baltimore City was limited in the House to four more delegates than the most populous county. No county was to have

²³ Debates, vol. i, p. 286.

²⁴ Debates, vol. i, p. 287.

²⁵ Debates, vol. ii, p. 19.

²⁶ Debates, vol. ii, p. 170.

²⁷ Debates, vol. ii, p. 197.

²⁸ Debates, vol. ii, p. 199.

less than two members, and the whole number of delegates never to exceed eighty.

In the Senate the method of federal representation was adopted; one senator from each county and the city of Baltimore elected by the people. This increased the representation of Baltimore City in the General Assembly from one-sixteenth to one-eighth of the total representation of the State.²⁹

Among the reforms brought forward, that of the judicial system of the State held a prominent place. The judiciary had been but slightly changed since the framing of the original constitution. In 1776 a court of appeals was established, whose judgment was final in all cases of appeal from the county courts, and courts of chancery. Originally there was also a court of admiralty, which court was abolished at the time of the adoption of the United States Constitution in 1789. In 1804 the State was divided into six judicial districts. For each district three judges were appointed by the governor with the approval of the Senate.

Reform in the judiciary had been one of the prominent features of the earlier agitation of 1836; but no change was made at that time. The tenure during good behavior, and the appointing of the judges by the governor, together with the extraordinary expense attendant upon the administration of justice were the principal grounds of complaint. The annual cost incurred by the State for the maintenance of the judicial system in salaries alone exceeded by several thousand dollars that of many other states of the Union, far more populous and of much greater territorial extent.³⁰

A reduction in the number of judges and a limitation on the income of county clerks, registers of wills, and other officers it was thought, would afford relief to the taxpay-
ers of the State, and contribute toward payment of the

²⁹ See ch. iii, p. 75.

³⁰ See ch. i, p. 19.

public debt. It was also claimed that the appointive power was abused and that the governor and Senate were influenced more by political considerations than by public interest.

The majority of the committee on the judicial department, Mr. Bowie, of Prince George's county, chairman, submitted a report providing for an elective judiciary. The term of office was to be ten years, and the judges re-eligible. The State was to be divided into three judicial districts; one on the Eastern and two on the Western Shore. The report also provided for the election by popular vote of all clerks, registers of will, justices of the peace, etc.³¹ All of these officers heretofore were appointed by the governor.

Mr. Bowie, in presenting the report of the majority said that in his judgment, the reform in the judicial system of the State was the most important question that could be submitted to the convention. He claimed that southern Maryland and the Eastern Shore would have never consented to the calling of that convention, save for the reform desired in the judiciary, and for the reduction in governmental expenses.³²

On the 18th of March, Mr. Crisfield, of Somerset county, one of the most distinguished lawyers of the State, from the minority of the same committee, submitted a report, providing for an appointive judiciary; with a tenure for good behavior. The State was to be divided into eight judicial districts. The estimate of the probable cost was placed at sixty-three thousand dollars per annum. Twenty-nine thousand dollars more than the estimate of the majority's report.³³

The contest in the judicial organization was over an elective and an appointive judiciary. Public sentiment in the State was strongly in favor of the former, though some

³¹ Debates, vol. i, p. 239.

³² Debates, vol. ii, p. 460.

³³ Debates, vol. i, p. 516-519.

of the counties, as Harford, had instructed their delegation to vote for the appointive system.³⁴

The general public desired to see a system which, while it gave to the judges a term sufficient to guarantee their independence would at the same time permit their work to be reviewed by the people, or as one member of the convention expressed it, "an independent judge dependent upon the people." It cannot be said that the change to the elective system satisfied the court, or the bar. It was incidental to the transformation going on in the other departments. Democracy rejected the appointive system. Every official must be chosen by popular vote.

The old appointive system found its ablest defender in Judge Chambers, of Kent county. He made a strong appeal for the independence of the judiciary as a department of the government, and as necessary to that independence, the tenure during good behavior. Judge Chambers attempted to show that there was as much reason for making the judges independent of the people in the United States as there was in England for making the judges independent of the crown. In his autobiography Mr. Chambers said that he claimed the merit of being the most ardent opponent of the "novel and unwise" system of constituting the judiciary by a popular election of judges.³⁵

The convention rejected the appointive system by a vote of forty-nine to twenty-three,³⁶ also by a vote of more than three to one the convention rejected an amendment offered by Mr. Phelps, of Dorchester county, for the election of the judges by joint ballot of the two Houses of the General Assembly.³⁷

The bill as originally reported by the majority, but slightly amended, was adopted. The State was divided into four judicial districts instead of three as the original

³⁴ Baltimore Sun, August 4, 1850.

³⁵ See autobiography in Scharf's Biographical Cyclopedias of Representative Men in Md. and D. C.

³⁶ Debates, vol. ii, p. 492.

³⁷ Debates, vol. ii, p. 487.

report provided. Baltimore City embraced one district, and the counties of the Eastern Shore a second.

The convention found great difficulty in determining whether the future sessions of the General Assembly should be held annually or biennially. Prior to 1846 the legislature had held annual sessions. In that year the General Assembly referred the question of biennial sessions to the voters of the State. The referendum was held on the general election day in 1846. Each voter was asked by the judges of the election whether he was in favor of biennial or annual sessions. Biennial sessions were declared for by a majority of some five thousand voters.

The biennial bill had been passed as an anti-reform measure. Its object was to reduce the governmental expenses and to remove the agitation for a constitutional convention. The bill received its greatest support on the Eastern Shore. The Western Shore gave a majority of some twelve hundred against the change.³⁸

The committee on the legislative department favored biennial sessions. When the report was read, an amendment was offered providing for annual sessions. Political considerations had great influence in the desire to return to the annual sessions. The change in the basis of representation would give the Democratic party the majority in future legislatures. "Democracy demanded that elections be free and frequent."

Mr. Dirickson, of Worcester county, referring to the vote of the people on the biennial bill in 1846, said, "It was wonderful that those who professed to drink from the very fount of Democracy—who worshiped at no other shrine, and bowed to no other political god—should have so soon not only scoffed at the mandates, but absolutely by their speeches rebuked the very wisdom of the people."³⁹

The argument in favor of annual sessions was made on the ground that a greater amount of labor than usual

³⁸ Debates, vol. i, p. 277.

³⁹ Debates, vol. i, p. 272.

would be imposed upon the General Assembly, by reason of the necessity of enacting laws to carry out the provisions of the new constitution. They claimed that biennial sessions were anti-democratic in their tendency; and were an indirect and open violation of the spirit of the clause in the Declaration of Rights which declared that elections ought to be free and *frequent*. As a proof that annual sessions were necessary they referred to the states of New York, Massachusetts, Pennsylvania, and other states, which had annual sessions. They claimed that the relation which cities bear to the rest of the State, because of the great concentration of population and capital in the cities, rendered annual sessions of the legislature absolutely necessary for the preservation of the equilibrium between the diversified interests. The convention finally agreed to annual sessions for three years; thereafter the sessions of the legislature were to be biennial.

The committee on the Declaration of Rights, Mr. Dorsey, of Anne Arundel county, chairman, submitted their report on the 11th of January, which was taken up by the convention for discussion on the 28th.⁴⁰ As reported by the committee the preamble to the Declaration of Rights read as follows: "We, the Delegates of Maryland, in convention assembled, taking into our most serious consideration the best means of establishing a good constitution in this State, declare," etc. The words of the preamble were substantially the same as those adopted in 1776.

Mr. Dashiell, of Somerset county, moved to amend the preamble by inserting after the word "Maryland" the words "representing the counties, and city of Baltimore."⁴¹ The object of the amendment was to assert the theory that the counties and the city of Baltimore were parties to the compact in their municipal capacities.

This theory of political individuality of the counties had

⁴⁰ Debates, vol. i, p. 140.

⁴¹ Debates, vol. i, p. 235.

been urged many times in the legislature, during the reform agitation, and was referred to in the convention. Mr. Dashiell's view of the government of Maryland was that of a confederation of counties: each county being a separate and distinct community. He did not regard the counties as sovereignties, because the State herself had scarcely a principle of sovereignty left after the formation of the Federal Government.

The basis of this view of the political individuality of the counties was an historical one. In the convention of 1776, which framed the original constitution of the State, the counties were represented equally. In that convention the voting was by counties; and not by individuals, except in certain cases, and on the final adoption of the constitution.⁴² In the convention of 1776 Baltimore town, and Annapolis city were recognized as boroughs; and a representation of only one-half of that allowed to a county was conceded to them. The resolution in determining the representation of Baltimore town and Annapolis says, "Nor shall the resolution be understood to engage or secure such representation to Annapolis or Baltimore town, but temporarily; the same being, in the opinion of this convention, properly to be modified, or taken away, on a material alteration of circumstances of those places, from either a depopulation or a considerable decrease of the inhabitants thereof."⁴³

From these facts Mr. Dashiell argued that the right was reserved to take away the representation of Annapolis and Baltimore, under certain circumstances; but no such right was given, reserved, or acknowledged to have the like effect upon the counties under any circumstances whatever. The right to political existence and equal representation was reserved to each county, and whenever this equal representation was to be changed, modified or abol-

⁴² See Proceedings of Convention, June 25, 1774.

⁴³ Proceedings of Convention, July 3, 1776.

ished, it must be done by the free consent, or acquiescence of the counties, that it was under this agreement of equal representation that the counties entered into the compact of government in 1776.⁴⁴

The style of the preamble as finally adopted was introduced by Mr. Randall, of Anne Arundel county.⁴⁵ The important change made substituted "people" for "delegates." The whole clause reading: "We the people of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good constitution in this State, for the sure foundation, and more permanent security, thereof, declare," etc. This preamble was copied verbatim in the constitution of 1867.

The first article of the Declaration of Rights, as reported by the committee read as follows: "That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole." Mr. Presstman, of Baltimore City, moved an amendment to the above article by adding, "and they have at all times the inalienable right to alter, reform, or abolish their form of government in such manner as they may think expedient."⁴⁶ The object of the amendment was to vindicate the revolutionary character of the convention, and to insert in the constitution the right of revolution.

This doctrine that the majority of the voters of the State had the right to alter or change the constitution whenever and in whatever manner the majority deemed best, irrespective of legal authority, or constitutional means received a large support during the reform agitation. Although Mr. Gwinn, of Baltimore City, said in support of the amendment that its object was not to assert the right of revolution, but to compel the recognition by the

⁴⁴ See Mr. Dashiell's speech, Debates, vol. i, pp. 437-441.

⁴⁵ Debates, vol. ii, p. 785.

⁴⁶ Debates, vol. i, p. 143.

existing government of the source of power in the State.

The amendment of Mr. Presstman was taken from the Declaration of Rights of the State of Texas, and appears in the constitution or Declaration of Rights of several of the states.⁴⁷

It was at this time that Mr. Hicks moved his amendment to the Declaration of Rights, which provided for the right of any portion of the State to secede from the other.⁴⁸ The amendment of Mr. Presstman was amended so as to give the majority of the voters the right of changing the constitution, but in a legal manner, and was adopted.⁴⁹

The 9th section of the report of the committee on the legislative department declared that, "No priest, clergyman, or teacher of any religious persuasions, society or sect, and no person holding any civil office of profit under this State, except justices of the peace, should be capable of having a seat in the General Assembly."

The Rev. Mr. Chandler, of Baltimore county, the only clergyman in the convention, made a vigorous attempt to abolish the first section of the clause, which he regarded as entirely unnecessary and unjust. In defence of his motion to "strike out" Mr. Chandler said that, "Equal rights and privileges to all" was a principle advocated by the members of the convention, yet the same gentlemen calmly unite their strength to blot from political existence a numerous and influential class of citizens as wholly unworthy of all confidence and even dangerous to the community. "What great offence" he asked, "what crime have this class of citizens committed, that they should be deprived of one of the dearest privileges of American-born citizens—that of eligibility to office? Have they committed treason? Have they been guilty of highway robbery? Are they

⁴⁷ Maine, Dec. of Rights, 2d sec., 1820; Massachusetts, Preamble to Constitution, 1780; Vermont, Dec. of Rights, art. vii, 1793; Connecticut, Constitution, art. i, 1818; Virginia, Dec. of Rights, 2d sec., 1820; Indiana, Constitution, art i, 2d sec., 1816.

⁴⁸ See ch. ii, p. 43.

⁴⁹ Debates, vol. i, p. 186.

murderers? None of these crimes have been alleged against them; yet in the opinion of the committee they were guilty of a crime, which should forever disfranchise them as citizens of the State."⁵⁰ Twenty-one states out of the thirty-one in the Union at that time had no proscription measure against the clergy. Mr. Chandler's motion to strike out the section was defeated by a vote of two to one.⁵¹

The report of the committee on the executive department was submitted by ex-Governor Grason, chairman, on the 7th of March. The report provided for the election of the governor by popular vote, for a term of three years. The State was to be divided into three gubernatorial districts. The counties on the Eastern Shore composed one district; and the Western Shore the other two. From each district the governor was to be chosen in rotation. Mr. Dorsey, of Anne Arundel county, moved to amend the report by the election of the governor by an electoral college. This amendment was rejected by a vote of sixty to nine.⁵² Several unsuccessful attempts were made to have the State divided into four gubernatorial districts. The report was amended by making the term of office four years instead of three; and to be eligible to the office the candidate was required to have been a citizen of the United States for five years instead of ten, and a resident of Maryland for five years instead of seven.

The system of districting the State for the election of the governor, was also attempted for the selection of United States senators. In 1809 the legislature passed a law dividing the State into United States senatorial districts of the Eastern and Western Shores.⁵³ A discussion arose in the convention as to its legality. The law of 1809 had always been observed by the General Assembly in selecting United States senators. The question had never come before the

⁵⁰ Debates, vol. i, p. 389.

⁵² Debates, vol. i, p. 455.

⁵¹ Debates, vol. i, p. 394.

⁵³ Act 1809, ch. 22.

Senate of the United States for determination as to the constitutionality of the law. Several members of the convention held the opinion that the State of Maryland had entire control over the whole subject of the election of United States senators, except so far as limited by the Federal Constitution, which provides that the election of United States senators shall be by the state legislatures.⁵⁴

Other members of the convention contended that districting the State into senatorial districts would be a violation of the Federal Constitution by adding other qualifications for United States senators than that provided for by the Constitution of the United States. They argued that if the legislature could restrict the selection of United States senators to a district, it could equally restrict the selection to a certain county, or city, and as a logical deduction the legislature had the authority to restrict the selection of senators to a certain party, or class.

Mr. Bowie, of Prince George's county, moved an amendment to the 24th section of the legislative report, making it obligatory upon the General Assembly to lay off six United States senatorial districts. Mr. Bowie said that it was of great importance to the agricultural portions of the State that they should be represented in the Senate of the United States, and should not always be overruled by the commercial interest. In the Senate of the United States, above all places, could agriculture be fostered and protected.⁵⁵

Another able defender of the proposition for districting the State for United States senators was found in Mr. T. H. Hicks: "a feeble representative of the Eastern Shore" as he called himself. Mr. Hicks said he did not profess to be versed in the law; but he did profess to have some common sense, and to understand to some extent the rights of the people of Maryland. "Were the people of the Eastern Shore," he asked, "to be retained as men

⁵⁴ U. S. Constitution, art. i, sec. 3.

⁵⁵ Debates, vol. ii, p. 259.

serfs, hewers of wood and drawers of water for the city of Baltimore?" If they could be allowed to secede from the Western Shore they would gladly do it. But no, they had built canals and railroads for the city of Baltimore, and their services were still required. Ten votes in the legislature had been voted to Baltimore City, and she seemed now to be hardly as well—certainly not more satisfied—with ten than she had been with five. In a short time Baltimore City would require a still greater representation. At each new change the agricultural and slave interests were less protected. He believed it to be right and essential for the protection of the interest of the Eastern Shore, that the Eastern Shore should have a representative in the Senate of the United States.⁵⁶

Mr. Bowie subsequently substituted two senatorial districts for six as his original amendment provided. The Eastern Shore comprised the first district, and the Western Shore the second.⁵⁷ The convention, after a protracted debate, refused to place in the constitution a provision for districting the State for the election of United States senators.

The convention had considerable difficulty in determining the manner in which future amendments to the constitution should take place. The report of Mr. Sollers, of Calvert county, chairman of the committee on future amendments and revision, gave the amending power to the General Assembly. The report also provided for a constitutional convention. The convention was to be called by the General Assembly, subject to the ratification by the succeeding legislature, after a new election. The report of Mr. Sollers did not receive the assent of the majority of the committee.⁵⁸

On the next day (April 4) Mr. Fitzpatrick, of Allegany county, from the same committee submitted a report in

⁵⁶ Debates, vol. ii, p. 282-283.

⁵⁷ Debates, vol. ii, p. 270.

⁵⁸ Debates, vol. ii, p. 223.

which four of the members of the committee concurred. The report provided that the General Assembly should submit to the voters of the State a proposition relative to the call of a convention every ten years. If the majority of the voters so determined the convention was to meet at its earliest convenience.⁵⁹ Mr. Brent, of Baltimore City, offered a substitute for the above report, by making it obligatory on the governor of the State to issue a proclamation every ten years for the taking of the vote of the people in reference to a convention.⁶⁰ The difference between Mr. Brent's proposition and the majority of the committee's report was that the former guaranteed independence of the legislature, while the other left to the legislature the right of authorizing the vote to be taken on the question of a convention.

Mr. Sollers said that he did not know how rapid were the strides of Baltimore City in the cause of abolition; but he knew the insecurity of slave property in southern Maryland. Slave property was insecure just in proportion as the counties surrendered their control over the government of the State. He was not willing to trust the maintenance of slavery under a constitutional provision which would enable the majority of the voters to call a convention.⁶¹

Mr. Jenifer, of Charles county, in a speech before the convention on the 29th of January, 1851, referring to the article in the constitution prohibiting the legislature from passing any law affecting the relation of master and slave as then existing in the State, said: That article was intended to put to rest the fanaticism as regards slavery in Maryland, and would do so, so long as the constitution and laws were respected. But if the right of a bare majority was recognized to abolish the existing system of government, and establish a new one, that provision was no guar-

⁵⁹ *Ibid.*, p. 245.

⁶⁰ *Debates*, vol. ii, p. 360.

⁶¹ *Debates*, vol. ii, p. 364.

antee to the southern counties that the constitution would be respected. If the people of Baltimore City, together with those of Baltimore and Frederick counties, who had less interest in slavery than any other portion of the State, should deem it expedient to abolish slavery there would be no means to prevent them. If the right of the majority to abolish the constitution was recognized, the right of secession must go "*pari passu*" with it. It would become the duty of the Eastern Shore and of the lower counties of the Western Shore to adopt any measures to protect themselves, their liberties, and their property from revolution and anarchy.⁶²

The report of the majority, but slightly amended, was adopted. The legislature was authorized to pass a law for ascertaining the wishes of the people in regard to calling of a convention, immediately after the publication of each census of the United States.

What to do with the free-negro population of Maryland had been a problem much discussed for several years. On January 12, 1842, a Slave-Holders' Convention was held in Annapolis. The purpose of this convention was to take such measures as would influence the legislature to pass more stringent laws for the protection of slavery. The convention proposed laws to prevent all manumissions of slaves; except on condition of immediate transportation at the expense of the manumittor, to some place out of the State, and to prevent free negroes from coming into Maryland. Large rewards were recommended for the conviction of persons enticing slaves to run away.⁶³ In compliance with the recommendations of the convention, the legislature passed more stringent laws in reference to the free negroes.⁶⁴

On the 4th of December, the convention of 1850 ap-

⁶² Debates, vol. i, p. 153.

⁶³ Niles Register, 5th ser., vol. 61, p. 322.

⁶⁴ Scharf's History of Md., vol. iii, p. 325.

pointed a committee to whom was referred the subject of the status of the free colored population. The committee was required to submit to the convention "some prospective plan, looking to the riddance of this State, of the free negro, and mulatto population thereof, and their colonization in Africa."

The increase of the free black population in Maryland between the years of 1840 and 1850 was eleven thousand one hundred and twenty-nine. From 1790 to 1850 the annual increase averaged one thousand and fifty-two. The counties of Cecil, Kent, Caroline, Worcester, Harford and Baltimore City, had more free negroes than slaves in 1850. The counties of Charles, St. Mary's, Calvert, Kent, Caroline and Worcester showed an increasing per cent of free negroes over the whites in the ten years between 1840 and 1850. The total white increase during the same decade for the whole State was 29.9 per cent. The free black increase was 17.9 per cent. Slaves had decreased.⁶⁵ The committee showed that at the given rate of progression, the free negro population must in a few years exceed the white population in eleven of the counties. The committee explained the cause of this increase by the emigration of the white population to the western states, while the free negro remained, knowing that when once he emigrated, the law forbade his return.

The Maryland State Colonization Society was incorporated by the state legislature in 1831.⁶⁶ The object of the society was to employ the funds collected in Maryland for the removal of the free negro population. From this time the plan of colonization in Africa was adopted as a state policy.

The act of 1831 ordered the governor and council to appoint a board of three managers, members of the Maryland Colonization Society, whose duty it should be to

⁶⁵ Committee's Report, Debates, vol. ii, p. 220.

⁶⁶ Act 1831, ch. 314.

have removed from Maryland all blacks then free who might be willing to leave. All those who might be freed subsequently to the act were to be removed whether willing or not.⁶⁷

In 1834 the State Colonization Society purchased territory in Liberia, Africa, to the extent of one hundred and thirty miles on the Atlantic Coast, and to an indefinite extent into the interior. The seat of the government was Cape Palmas. For the removal of the free black population the treasurer of the State was authorized to contract loans to the amount of two hundred thousand dollars. Ten thousand dollars were placed annually upon the tax-list to pay the interest on the loans, and to provide for the payment of the principal. Between the years of 1831 and 1850 there were one thousand and eleven free negroes colonized in Africa from the State of Maryland, at a cost of two hundred and ninety-eight thousand dollars. Of this amount one hundred and eighty-four thousand five hundred and thirty-three dollars was paid by the State.

The committee reported the following to be placed in the constitution:

Sec. 1. "The General Assembly shall have power to pass laws for the government of the free colored population and for their removal from the State, and at its first session after the adoption of this constitution, shall provide by law for their registration."

Sec. 2. "No person of color shall be capable of purchasing or holding real estate within this State, by title acquired after the adoption of this constitution,"

Sec. 3. "No slave shall be emancipated or become free except upon condition that he or she leave this State within thirty days next after his or her right to freedom shall accrue."

Sec. 4. "No free person of color shall immigrate to, or come within this State to reside."⁶⁸

⁶⁷ Brackett, *The Negro in Md.*, p. 165.

⁶⁸ Debates, vol. ii, p. 223.

The report of the committee on the free negro population was never considered by the convention; though there were several attempts made for its consideration. The question was considered when the twenty-first article of the Declaration of Rights was under discussion. This article declared: "That no freeman ought to be taken or imprisoned, or disseized of his freehold, liberty or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the law of the land."⁶⁹

Mr. Brent, of Baltimore City, moved an amendment to the article by substituting the word "citizen" for "freeman."⁷⁰ Mr. Brent said that the object of the amendment was to provide for a contingency, which might arise, in which it would be necessary to banish the free negro population of the State. He considered that without his amendment the Declaration of Rights would prohibit the legislature from removing this class. Several members of the convention expressed their belief that the time was not far distant when the State would be compelled to take serious measures for the removal of the free colored population from its borders. Mr. Merrick, of Charles county, said that the time must come when a separation, peaceably or forcibly, must take place between the free blacks and the whites. No two distinct races could, or ever would, inhabit the same country, except in the relative condition of master and slave—of the ruler and the ruled. Sooner or later they must separate or the extermination of the one or the other must take place. The black race could not remain; they were multiplying too fast.⁷¹

Under the original constitution there was no difference in the character of citizenship between freemen of whatever color. In 1802 the political power of the State was vested in free white male citizens only.⁷² Since that time

⁶⁹ Compare Magna Charta, art. 39.

⁷¹ Debates, vol. i, p. 197-198.

⁷⁰ Debates, vol. i, p. 194.

⁷² Act 1802, ch. 20.

the free negro had no political rights whatever. Mr. Brent's amendment was rejected, and a provision was inserted in the Declaration of Rights, which permitted the legislature to pass laws for the government, and disposition of the free colored population.⁷³

A petition was presented to the convention from a number of citizens of Frederick county, praying that an article be inserted in the constitution, compelling all free negroes, annually to give bond, with responsible security to the State, for their good behavior; in default of bond they were to be compelled to leave the commonwealth.⁷⁴

Another question of interest that received the earnest consideration of the convention, but upon which no final decision was taken was the question of public education. Maryland at that time had no general system of public schools.⁷⁵ Each county and city maintained its own schools, except as to certain funds distributed by the State. These funds were derived from different sources. The first was called "The Free-School Fund." It was derived from the surplus revenue of the Federal Government distributed among the states.⁷⁶ The free-school fund amounted to nearly sixty-three thousand dollars in 1851.⁷⁷ This fund was distributed among the counties and Baltimore City as follows: one-half equally, and one-half according to the white population of each respectively.

The second fund was derived from certain taxes on banks.⁷⁸ It amounted to about twenty thousand dollars in 1851.⁷⁹ All fines collected from the violation of the laws

⁷³ Dec. of Rights, 1851, sec. 21.

⁷⁴ Debates, vol. i, p. 371.

⁷⁵ See Steiner's History of Education in Md., p. 66.

⁷⁶ An act of the legislature 1836, ch. 220, sec. i, provided that of the money received, and to be received from the Federal Government, \$274,451 should be set aside for the purpose of defraying the interest on the public debt already created. The residue was to be deposited with banks, with interest at 5 per cent or more; the interest accruing was to be distributed among the counties and Baltimore City for the support of common schools.

⁷⁷ Debates, vol. i, p. 431.

⁷⁸ Act 1821, ch. 113.

⁷⁹ Debates, vol. i, p. 431.

against betting on elections; and all deposits of wagers on elections, were to be paid to the treasurer of the Western Shore for the benefit of the school fund,⁸⁰ the fines collected from persons violating the oyster laws were also appropriated to the same purpose.⁸¹

On the 25th of February, Mr. Smith, of Allegany county, chairman of the committee on education submitted a majority report. The report recommended to the legislature to establish a permanent and adequate school fund, so soon as the financial condition of the State should justify it. The fund was to be securely invested, and remain perpetually for educational purposes. The legislature was also to establish a uniform system of public schools throughout the State. The report also provided for the establishing of a State Normal School, and for the election of a state superintendent of public schools.⁸² The consideration of the committee's report, after several attempts to have it taken up by the convention, was postponed indefinitely, and no final action was taken on the subject.

The question of public education was discussed in the convention when the report of the committee on the legislative department was considered. The original bill as reported by this committee provided that no loans should be made upon the credit of the State, except such as may be authorized by an act of the General Assembly passed at one session; and be confirmed at the next regular session of the General Assembly.⁸³ Mr. Constable, of Cecil county, moved an amendment to this article by inserting a provision which would authorize the legislature to impose taxes for the establishment of a uniform system of public schools throughout the State, adequately endowed to educate every white child within its limits.⁸⁴ This amendment was rejected. The extravagance of the legis-

⁸⁰ Act 1839, ch. 392, sec. 2.

⁸¹ Act 1833, ch. 254, sec. 5.

⁸² Debates, vol. i, p. 339.

⁸³ Debates, vol. i, p. 124; Committee's Report, sec. 21.

⁸⁴ Debates, vol. i, p. 395.

lature in granting state aid to works of internal improvement, created a general demand for restriction on the power of the General Assembly to make appropriations.

The convention adopted a provision which prohibited the legislature from appropriating public money, or pledging the State's credit for the use of individuals, associations, or corporations, "except for purposes of education." The last clause was an amendment introduced by Mr. Davis, of Montgomery county, an ardent advocate for a general system of public education. This amendment of Mr. Davis was adopted by the convention by a vote of 43 to 24;⁸⁵ but on the motion of Mr. Thomas, of Frederick county, was reconsidered and rejected by a vote of 39 to 31.⁸⁶

The opposition to the establishing of a uniform system of public education within the State, came from Baltimore City and the larger counties. The cause of the opposition was due to the very unequal manner in which the existing school fund was distributed; and because many of the counties and Baltimore City had ample provisions for schools under their local systems. Several of the counties had their own funds specially devoted to educational purposes. There was a general feeling of disappointment in the convention at the failure to provide for a uniform system of public schools. One member advocated a poll-tax. No man, he said, would be so unworthy the name of an American citizen as to refuse the price of one day's labor, to maintain public schools.⁸⁷ It is noteworthy that the constitutional convention in 1864 provided for a uniform system of public schools along the line recommended by the committee on education in 1851.

Petitions were presented to the convention from citizens of thirteen counties, and from Baltimore City, praying that a provision might be made in the constitution which would prohibit the legislature from granting the privilege

⁸⁵ Debates, vol. i, p. 425.

⁸⁷ Debates, vol. ii, p. 808.

⁸⁶ Debates, vol. i, p. 433.

to sell intoxicating liquors to any person in any part of the State, except on the condition that his application to sell the same was approved by a majority of the voters in the district where the liquors were to be sold. The petitions were referred to a special committee; but no report was made. One member made the proposition that every member of the convention should join the temperance society.⁸⁸

Mr. Hicks proposed an amendment which would make it unconstitutional for a member of that convention to accept any office or an appointment under the constitution until ten years after its adoption. This amendment was rejected by a vote of 39 to 32.⁸⁹

The convention, after a session of more than six months, adjourned *sine die* on the 13th of May, at 1.30 A. M. The constitution was not adopted as a whole by the convention. That a majority of the members present at the final session would have voted for its adoption, is doubtful. The final adjournment took place rather unexpectedly. The reports from several committees had not been considered.

There was a general feeling of disappointment throughout the State with the convention, and a demand for its adjournment. The last scene was one of confusion and disorder. A gentleman, who was present at the final session, and whom the *Baltimore American* assures the readers was an authentic and responsible person, said that there were some things connected with the constitution of 1851 which properly belongs to its history, but which would never appear in the official proceedings as published. A few days before the adjournment it was announced by several of the leading and most influential men of the "reform party" that a final vote of acceptance on the constitution as a whole would be taken, when all the parts were completed and arranged. At this time there were some eighty or ninety members in attendance. It soon

⁸⁸ Debates, vol. ii, p. 605.

⁸⁹ Debates, vol. i, p. 205.

became evident that the known objections to certain provisions in the constitution would prevent its acceptance by the majority of the convention. Finding that the constitution would not be adopted as a whole, an order was passed that when each separate part of the document had been passed, the whole should be signed by the president and secretary. To further these purposes a day was set on which all must be finished; whether ready or not the convention must close. The committee on revision sat in the senate chamber, and as fast as a defect or omission was discovered, sent in one of their members to have it corrected by the convention. The last scene would have been amusing, had the occasion not been a grave one. At two in the morning the committee on revision, headed by its chairman, with an assembly partly excited and partly asleep, was presenting as the constitution a bunch of paper only fit to be offered at the counter of a rag merchant. Some asked for a needle and thread to stitch the constitution.

Our author concludes as follows: "If the law-loving and dignified men, who framed the constitution of 1776, were permitted to revisit the scenes of their former glory, they would have bowed their heads with shame at the degeneracy of their posterity."⁹⁰

Frequently the convention was unable to transact business for want of a quorum. The *Baltimore Sun* in an editorial May 7, 1851, said that, "It is clear to every dispassionate observer that the people were either remiss in their selections of men as reformers; were governed in the matter by *party* rather than by *political* considerations, or were unprepared to appreciate the quality and character of a bold and searching reform. Instead of a convention of men acting under an exalted sense of great responsibility, we have seen on the part of many of them a constant display of factious opposition, originating in sectional interests, and party prejudice."

⁹⁰ Baltimore American, May 19, 1851.

CHAPTER III

THE CONSTITUTION

The constitution was submitted to the voters of the State, June 4, 1851, and was ratified by a majority of 10,409 votes.¹ The eight counties of the Eastern Shore gave a majority of 1337 for the new constitution. The counties of Anne Arundel, Charles, Calvert, Kent, Montgomery, Prince George's, Somerset and St. Mary's voted against its adoption.

The constitution pleased no one; but to many it was an improvement on the old one, "a thing of shreds and patches." Of the sixty articles of which the original constitution consisted, twenty-five had been abrogated and twenty had been so amended as to have retained little of their original form. Altogether there had been sixty-six amendments made.

Only twenty-two days intervened between the adjournment of the convention and the ratification of the constitution. During this time the friends and opponents of the new constitution kept constantly before the public its merits and defects.

It has been stated that the people of the State adopted the constitution of 1851 without a full knowledge of its provisions. This statement appears to be entirely unfounded. The text of the constitution was published in the daily and weekly presses of the State. It was also published in pamphlet form. Furthermore it was translated into German, and published in the daily *Deutsche Correspondent*, a paper having quite a reputation in its activity for promulgating the public documents and laws among the large number of Germans in the State.²

¹ See Appendix, p. 86.

² Baltimore Sun, May 22, 1851.

Of the one hundred and three members of the convention, only fifty-five favored the adoption of the constitution.³ The president of the body, himself, the Hon. John G. Chapman, a few moments before he declared the convention adjourned *sine die*, said, that he had witnessed with profound regret many of the features embodied in the constitution. That the salutary changes were so few and light when weighed in the balance against graver and more objectionable features, that he had no other alternative than to vote, at the ballot-box, against its ratification.⁴

While the constitution was before the people for their consideration, the general tone of public discussion in regard to the work was free from strict party spirit. Two of the leading Whig papers: the *Frederick Herald* and the *Hagerstown Torchlight* declared in favor of the new constitution. The Democratic papers generally throughout the State urged its adoption, as well as several of the neutral county presses. The *Cambridge Democrat*, the *Centerville Sentinel* and the *Easton Star* were also in favor of adopting the constitution. These papers, while not entirely satisfied with the instrument, considered it an improvement on the old one. Other papers, as the *Rockville Journal* and the *Port Tobacco Times*, urged the rejection of the constitution.⁵ The *Baltimore American* was very strong in its opposition to the constitution, while the *Baltimore Sun* strongly urged its adoption.

While the discussion on the constitution was free from party spirit, it was not free from the appeals of the demagogues, who sought to array the poor and the rich in antagonistic positions.⁶ The provisions of the constitution relating to the homestead exemption,⁷ and to the abolition of imprisonment for debt,⁸ gave rise to these unjustifiable attacks.

³ Baltimore Sun, May 14, 1851.

⁵ Baltimore Sun, May 23, 1851.

⁶ Baltimore American, June 2, 1851.

⁷ See page 78.

⁴ Debates, vol. ii, p. 890.

⁸ See page 78.

The chief objection to the new constitution was the change introduced in the organization of the judicial system of the State. The *Baltimore American* in an editorial of June 3, 1851, declared, that "there were many men in Maryland, who, if they approved of every feature in the constitution, save that which reorganized the judiciary, would vote against the constitution on account of that one insuperable objection."

Other objections to the adoption of the constitution were placed on less objectionable grounds. An attempt was made to show that there would be a period of four months of anarchy in the State, if the instrument was adopted. During these four months civil wrongs would go unredressed; debts uncollected, and crimes unpunished.

The constitution, if adopted, was to go into effect July 4. No election was to be held until November the 5th. Until the latter date, the new offices created by the new measure could not be put in operation, while the offices which were to be abolished were to be discontinued from the day of its adoption. The county courts, and the Baltimore City court were abolished. No specific provisions were made for the continuation of the jurisdiction of these courts until their successors could be established. The court of chancery, which was also abolished, was to continue by a specific provision until two years after the adoption of the constitution.⁹ Those who opposed the adoption maintained that the same provision did not apply to the former courts.¹⁰

The framers of the constitution intended that the eighth section of Article 10 should bridge over the transition period. This section provided that the governor and all civil and military officers then holding commissions should continue in office until they were superseded by their successors. Whether the adoption of the constitution would

⁹ Constitution 1851, art. iv, sec. 22.

¹⁰ *Baltimore American*, May 26, 1851.

or would not create an "interregnum" of four to six months in the administration of justice was a debatable question. The omission of a definite provision for the continuation of the courts until their successors could be established, shows the inability of the majority of the framers of the constitution to do the task assigned them.

A contributor to the *Baltimore American* from Cumberland, Md., states that he observed a group of citizens on the street discussing the constitution. "One said that it had cost the State \$183,000, which, according to the best calculation he could make, was a little more than \$1.50 per word, which, considering the quality of the goods, made it about the hardest bargain of modern times."¹¹

Other motives than the merit of the constitution influenced many to vote for its adoption. Its rejection would have again placed the fundamental law of the State in the power of the General Assembly. Governor Lowe in his inaugural address, January 6, 1851, referring to the convention then in session said, "Even should no practical reforms result from the labors of the present convention, still I regard the value of the principle, now established, so great in view of the possible future, as to hold the expense, inconveniences, and even total failure of this first attempt, however deplorable, to be entirely of subordinate importance. While, therefore, the people yearn for the enjoyment of those salutary reforms, which right, justice, and good policy call for; and although they should possibly be doomed to meet with a total or partial disappointment of their reasonable hopes, they cannot forget to console themselves with the knowledge that the great battle, in fact was fought and won, when the legislature after a steady resistance of twenty years, finally promulgated, and Maryland by an almost unanimous vote ratified the doctrine, that the people are not enchained by the fifty-ninth article of the constitution."¹² This is the entering wedge to the future. This is the key to the treas-

¹¹ *Baltimore American*, June 2, 1851.

¹² See ch. i, p. 10.

ury of popular rights. With this weapon the people will be resistless, in all future struggles for the extension of their privileges.”¹³

On the whole, the constitution of 1851 was rather a poor instrument, though there were some salutary reforms made. A comparative study of the constitution with the one it superseded reveals some radical changes.

In the Declaration of Rights there were but few changes made. The addition to the first article, which declared that the people had at all times, according to the mode prescribed in the constitution, the inalienable right to alter, or abolish their form of government in such manner as they may deem expedient, was a subject of much discussion during the reform agitation, and in the convention.¹⁴

The twenty-fourth article of the Declaration of Rights declared that no conviction should work corruption of blood, or forfeiture of estate. This was a modification of the original article, which permitted forfeiture of estate for murder, and treason against the State, on conviction and attainder.¹⁵ A new article was inserted in the Declaration of Rights, which declared that the legislature ought to encourage the diffusion of knowledge and virtue, the promotion of literature, the arts, sciences, agriculture, commerce, and manufactures, and the general amelioration of the condition of the people.¹⁶

The thirty-fourth article of the Declaration of Rights is especially worthy of notice, as it permitted Jews and others to hold office, if they declared their belief in a future state of rewards and punishments. The constitution of 1776 required in addition to the oath of support and fidelity to the laws and constitution of the State, a declaration of a belief in the Christian Religion.¹⁷

¹³ Debates, vol. ii, p. 96.

¹⁴ See ch. ii, p. 26.

¹⁵ Dec. of Rights, 1776, art. 24.

¹⁶ Compare Cal. Const. 1849, art. x, sec. 2.

¹⁷ Dec. of Rights, 1776, art. 35. The latter clause was repealed in 1826, and Jews were given the same privileges as Christians. See Steiner’s *Citizenship and Suffrage in Md.*, p. 33.

The first article of the constitution relates to the elective franchise. Some salutary reforms were made in this with the view of obtaining the purity of the ballot-box. Illegal voting had been a great source of complaint from both political parties. The right of suffrage required a residence of twelve months in the State, and six in the city or county. The act of Congress requiring members of that body to be elected by single districts throughout the United States, made it necessary to divide the State into congressional districts. There was no fixed duration of residence required in passing from one district to another within the same county or city. This gave facility to the perpetration of frauds on the elective franchise under the system, known as "colonizing voters."

The first attempt to have a registration of voters was made in 1837. In that year a law was passed to provide for the registration of the voters in Baltimore City. This law was considered by many to be unconstitutional, because it imposed duties upon the citizens of Baltimore City, which were not common to other citizens of the State. An unsuccessful attempt was made in the convention of 1850 to provide for a general registration law in the State. It was not until 1865 that Maryland had such a law.¹⁸

The constitution of 1851 required six months' residence in the district, and twelve in the State, in order to exercise the right of suffrage. The right to vote was retained in one district, until the same right was acquired in another. The constitution also provided that a person guilty of receiving or giving bribes for the purpose of procuring votes, should be forever disqualified to hold any office of profit or trust, or to vote at any election thereafter. The pardoning power of the governor did not extend to this offense. All officers before entering upon their duties were obliged to take an oath that they had not been guilty of bribery or fraud in any way.¹⁹

¹⁸ Steiner's *Citizenship and Suffrage in Md.*, p. 47.

¹⁹ Art. i, sec. 4.

The constitution of 1851 made only slight changes in the executive department of the State. Prior to 1836 the governor was elected by joint ballot of both Houses of the General Assembly. By an amendment to the constitution in that year, the governor was to be elected by popular vote. The term of office was for three years. The State was divided into three gubernatorial districts, from each of which the governor was to be chosen in rotation.

The constitution of 1851 adhered to the system of districting the State for the election of the governor. The counties of the Eastern Shore formed one district. St. Mary's, Charles, Calvert, Prince George's, Anne Arundel, Montgomery, and Howard counties, and Baltimore City formed a second district. Baltimore, Harford, Frederick, Washington, Allegany, and Carroll counties constituted the third district. The qualification for the office of governor was slightly changed. The requirements were a five years' residence in the State, and a three years' residence in the district from which he was elected.

The most important change in the executive department was the limitation on the governor's appointing power. Previous to the adoption of the constitution of 1851, the governor, with the consent of the Senate, appointed the chancellor, all judges and justices and all civil officers of the government (assessors, constables, and overseers of roads only excepted).²⁰ The governor also appointed the clerks of the several county courts; the clerks of the court of appeals, and of Baltimore City court. The register of the High Court of Chancery, and the registers of wills throughout the State were also appointed by the governor.²¹ This extensive power of appointment, or the "executive patronage" as it was called, was thought to have an injurious influence upon popular elections, and a growing tendency to abuse. The constitution of 1851 provided for the election of nearly all of these officers by popular

²⁰ Constitution 1776, art. 48.

²¹ Act 1836, ch. 224, sec. 1.

vote. A new duty was imposed upon the governor, by making it obligatory on him to examine semi-annually the treasury accounts.²²

In the legislative and judicial departments the changes made by the constitution were more radical and numerous. The term of office of state senator was reduced from six to four years. One-half of the Senate was to be elected biennially, instead of one-third as formerly. The six-year term was thought to be so long as to take away, in a measure, the responsibility of senators to the people, for their conduct. No change was made in the mode of electing, nor in the numbers of senators. Each county and Baltimore City was given one senator.²³ For the first time in the history of the State, representation in the House of Delegates was based on the aggregate population.²⁴ This principle extended only to the representation of the counties. Baltimore City was limited to four more delegates than the largest county. Baltimore county was the most populous county in the State. Its population in 1850, including free black and slaves, was 41,589. The population of Baltimore City was 169,012, a difference of 127,-423.²⁵

The duty imposed upon the legislature to appoint two commissioners to revise and codify the laws of the State deserves to be noticed. There had long been need of a proper codification. Several attempts had been made, but without success.

Another salutary change in the constitution was the provision that no bill should become a law unless it was passed in each House by a majority of the whole number of members elected, and unless, at its final passage, the ayes and noes were recorded.²⁶ Formerly a great number of laws were passed by the silent assent of many of the members of the legislature. No vote being recorded, the mem-

²² Art. ii, sec. 17.

²³ Art. iii, sec. 2.

²⁴ See ch. i, p. 17.

²⁵ U. S. Census; Debates, vol. i, p. 287.

²⁶ Constitution 1851, art. iii, sec. 19.

bers of the General Assembly were enabled to escape from the responsibility of injurious legislation.

The constitution of 1776 permitted the Senate to give only their assent or dissent to all money bills. This restriction was removed by the constitution of 1851.

In Maryland until 1841 divorces were granted by the legislature, and no court had power to grant them. By an Act of 1841, ch. 262, for the first time, jurisdiction over applications for divorce was conferred upon equity courts. But it was held that this did not divest the legislature of its power to grant divorces.²⁷ The constitution of 1851 gave the equity courts the exclusive power to grant divorces. This change was made on the ground that it consumed too much of the legislature's time, and because it is properly a judicial act. The legislature in 1849, it was said, granted twenty-one divorces, and that generally upon *ex-parte* testimony.²⁸

The constitution of 1851 prohibited the legislature from contracting debts, unless authorized by a law providing for the collection of an annual tax sufficient to pay the interest of the debt contracted, and to discharge the debt within fifteen years. The amount of debt contracted should never exceed one hundred thousand dollars. The credit of the State was not to be given in aid of any individual, association, or corporation. The General Assembly was prohibited from involving the State in the construction of works of internal improvement, or making appropriations to works of like character.²⁹

The office of attorney-general was abolished. Judge Chambers, of Kent county, one of the delegates to the convention of 1850, fourteen years later said that the reason for the abolition of this office was purely from personal considerations, having relation to an individual,

²⁷ See Wright's Case, 2 Md. 429.

²⁸ Debates, vol. i, p. 247.

²⁹ Const. 1851, art. iii, sec. 22.

who, it was supposed was going to obtain the office.³⁰ The evidence for this assertion does not appear in the debates of the convention. The office was abolished by a vote of 45 to 14. Mr. Chambers himself voted for its abolition.³¹

The office of attorney-general was created by the constitution of 1776. The attorney-general was appointed by the governor, with a tenure of office during good behavior. The duties of the attorney-general were left undefined. In 1816 the legislature abolished this office.³² But in the succeeding session, a law was passed re-establishing the office, and defining its duties. In 1821 the duties of attorney-general were further defined. He was required to prosecute and defend on the part of the State all cases wherein the State was interested. He was required to give legal advice whenever the General Assembly, or the governor required it. He had also authority to appoint deputies in each county and in Baltimore City to aid him in the execution of his duties. Neither the attorney-general, nor his deputies received a fixed salary, but were paid for their services in fees. These fees were paid by the county or city where the services were rendered.

The objections to the continuation of this office arose from the manner in which the attorney-general was appointed, the tenure of office, and the extensive patronage in appointing his deputies.

The method of paying the attorney-general, and his deputies in fees was also objected to on the ground of affording greater remuneration than was necessary. It was estimated that the fees of the attorney-general amounted to \$9000 per annum. In addition to this sum the State was paying on the average \$1700 yearly to others than the attorney-general and his deputies, for legal

³⁰ Myers, *The Md. Const.* 1864, p. 72; *J. H. U. Studies*, vol. 19.

³¹ *Debates*, vol. i, p. 549.

³² *Act 1816, ch. 247*, confirmed by *Act 1817, ch. 269*.

services.³³ The great majority of the convention considered the office unnecessary, and desired its abolition.

In place of the attorney-general the constitution of 1851 created the office of "State's Attorney." One state's attorney was to be elected by popular vote in each county and in the city of Baltimore. The duties of the state's attorneys were defined as being the same as that of attorney-general and his deputies, whom they superseded. The term of office was fixed at four years. The salary was to be paid in fees.³⁴

The prohibition against imprisonment for debt was a progressive step, though at the time it called forth adverse criticism. The *Baltimore American* in an editorial of June 4, 1851, said that: "The abolition of imprisonment for debt discharged not merely the innocent bankrupt, but the swindler and the whole family of knaves. It paralyzed the arm of the law, because its processes are of no other avail than to give notice to the debtor that he may escape with his means if he will. Its tendency is to destroy the credit of the poor man, because it offers a temptation to defraud those on whom his credit must depend." The clause abolishing imprisonment for debt was introduced in the convention by Mr. Presstman, of Baltimore City, and was passed by a vote of 60 to 5.³⁵

The homestead exemption clause of the constitution was objected to on the ground of depreciating the value of the large capital invested in tenements.³⁶ The amount that could be exempted from execution for debt was five hundred dollars.³⁷

The legislature was prohibited to authorize the issue of any lottery grants. The same restriction was placed upon the legislature by a constitutional amendment in 1839.³⁸ Until the expiration of the lottery grants in the State, one

³³ Debates, vol. i, p. 535.

³⁴ Const. 1851, art. v.

³⁵ Debates, vol. i, p. 448.

³⁶ *Baltimore American*, May 31, 1851.

³⁷ Const. 1851, art. iii, sec. 39.

³⁸ Act 1839, ch. 31. Confirmed, Act 1840, ch. 261.

commissioner of lotteries was to be elected by popular vote. After the first day of April, 1859, no lottery schemes could be operated, nor any lottery ticket sold within the State.³⁹

A new feature in the constitution of 1851 was the provision for a general corporation law, and the prohibition against the chartering of a corporation by special act; except for municipal purposes, and in cases where, in the judgment of the legislature, the object of the corporation could not be attained under general laws.⁴⁰ The old system of chartering corporations by special act gave greater facility for corruption, and consumed much of the limited time of the legislature.

The liability clause of the constitution relative to banks, prohibited the legislature from granting thereafter any charter for banking purposes, or to renew any charter, except on the condition that the stockholders and directors of the bank should be liable to the amount of their respective shares of stock. A further restriction upon the chartering of banks was that no director or other officer of a bank should borrow any money from that particular bank.⁴¹

There was considerable opposition to this liability clause. It was claimed that the effect of the restrictions on the banks, and the double liability of the stockholders would seriously cripple the State's industrial activities.⁴² The liability clause as originally introduced in the convention by Mr. Sollers, of Calvert county, made the stockholders and directors responsible in their individual capacities for the full amount of the bank's liabilities. Mr. Sollers also made it a penitentiary offence, and the forfeiture of a bank's charter forever, for the officers of a bank to have any dealings with the bank with which they were connected, except in the matter of salaries.⁴³

³⁹ Const. 1851, art. vii, sec. 5.

⁴⁰ Art. iii, sec. 47; Act 1852, ch. 23.

⁴¹ Art. iii, sec. 45. ⁴² Baltimore American, May 17, 1851.

⁴³ Debates, vol. ii, p. 761.

The change in the judicial department was the cause of much opposition to the adoption of the constitution.⁴⁴ The jury was declared to be the judges of law as well as fact in the trial of all criminal cases.⁴⁵ All judges were to be elected by popular vote for a term of ten years. The salary of the judges of the court of appeals was fixed at twenty-five hundred dollars per year, and that of the circuit judges at two thousand. The State was divided into four, instead of six, judicial districts. The number of judges in each district was reduced from three to one.⁴⁶ The court of appeals was composed of four judges; one of whom was elected from each of the four judicial districts. The chief judge was to be designated by the governor. The court of appeals had appellate jurisdiction only, and its judgment was final in all cases.

In Baltimore City there was established a court of common pleas, which had civil jurisdiction in all suits where the debt or damage claimed did not exceed five hundred dollars; and was not less than one hundred dollars. This court had also jurisdiction in all cases of appeal from the judgment of justices of the peace in Baltimore City, and in all applications for the benefit of the insolvent laws of the State.⁴⁷ A superior court of Baltimore City was also established with jurisdiction over all suits where the debt or damage claimed exceeded five hundred dollars. Each of these courts consisted of one judge, elected by the voters of Baltimore City, for a term of ten years. The salary of the judges was twenty-five hundred dollars annually.⁴⁸ A criminal court of Baltimore City was also established, which exercised the jurisdiction heretofore exercised by the Baltimore City court.⁴⁹ In place of the county courts, the constitution of 1851 established circuit courts. For this purpose, the State was divided into eight judicial circuits. For each of these judicial circuits (except the fifth,

⁴⁴ Baltimore American, June 3, 1851.

⁴⁵ Art. x, sec. 5.

⁴⁶ Art. iv, sec. 7.

⁴⁷ Art. iv, sec. 10.

⁴⁸ Art. iv, sec. 12.

⁴⁹ Art. iv, sec. 13.

which included only Baltimore City, whose courts are described above), one judge was to be elected. The circuit judges were required to hold a term of court at least twice a year in each county.⁵⁰ The object in thus reorganizing the courts was to reduce the number of judges, and thereby decrease the cost of the judiciary. The qualifications for judges were: that, they must be learned in the law, having been admitted to practice in the State, and citizens of the State at least five years. They must be above the age of thirty years, and residents of the districts from which they were elected. A judge of the court of appeals was re-eligible until he attained the age of seventy years, and not after.⁵¹ He was subject to removal for incompetency, wilful neglect of duty or misbehavior in office, on conviction in a court of law, or by the governor upon the address of two-thirds of the members of each House of the General Assembly.

The treasury department of the State was remodeled. The constitution provided for a comptroller of the treasury. This was a new officer designed to be a check upon the treasurer. The comptroller was to be elected by the people at each election of members of the House of Delegates (*i. e.* every two years). His salary was twenty-five hundred dollars per annum. The treasurer was to be elected on joint ballot, by the two Houses of the General Assembly at each session. The salary was the same as the comptroller received. The duties of the comptroller were: to have the general superintendence of the fiscal affairs of the State. He must grant all warrants for money to be paid out of the treasury, and make a report of the financial condition of the State's treasury within ten days after the commencement of each session of the legislature.⁵²

The treasurer was required to render his account quarterly to the comptroller, and submit at all times to an in-

⁵⁰ Art. iv, sec. 8.

⁵¹ Art. iv, sec. 4.

⁵² Art. vi, sec. 2.

spection of the public funds in his hands. This plan of giving authority to the comptroller from one source; and to the treasurer from another, was to make them, in a measure, independent of each other, and thereby lessen the danger of collusion.

The constitution of 1851 provided for the establishment of an office of "Commissioners of Public Works." Such an office had been long deemed a necessity, but no provision had been made for its establishment. The control of the State over works of internal improvement had been exercised previously by a board of directors, appointed by the General Assembly. An act of the legislature in 1832 required the governor, with the consent of the council, to appoint three agents to represent the State at the meetings of the stockholders of all joint stock companies "incorporated to make roads and canals, and vote according to the interest of the State."⁵³

In 1840 the number of the board of directors for the State was increased to five. The power of appointment was taken from the governor, and given to the General Assembly. The directors were required to keep a journal of the proceedings of the stockholders in their general meetings, and report the same to the legislature.⁵⁴ It will be noticed that these commissioners were appointed to represent the State as one of the stockholders, and to cast the vote of the State in proportion to the amount of stock held by the State.

The office of commissioners of public works as established by the constitution of 1851, consisted of four members, who were elected by popular vote for a term of four years. One of the commissioners was to be taken from each of the four districts into which the State was to be divided for that purpose. The first district included the counties of Allegany, Washington, Frederick, Carroll, Baltimore and Harford. The counties of Montgomery, How-

⁵³ Act 1832, ch. 318.

⁵⁴ Act 1840, ch. 155.

ard, Anne Arundel, Calvert, St. Mary's, Charles and Prince George's formed the second district. Baltimore City constituted the third district, and the eight counties of the Eastern Shore the fourth. A residence of five years in the district from which the commissioner was chosen was required to be eligible to this office. The commissioners' duties were, to have supervision over all public works in which the State was interested as stockholder or creditor.

The commissioners were also given authority to regulate the "tolls" so as to prevent injurious competition. In case of an equal division of opinion among the commissioners, the State's treasurer had the final decision.⁵⁵ It will be noticed that the districts were so arranged as to place the sections of the State with similar interest in the same district.

County commissioners were to be elected directly by the people. These officers were previously appointed by the governor. The election must be by a "general ticket," and not by district. The powers of the county commissioners were strictly limited by the legislature. Road supervisors were also to be elected by popular vote, as well as the county surveyors. The county of Worcester was required to elect a wreck master. Every commonwealth officer, with the exception of the governor, whose yearly income exceeded three thousand dollars was required to keep a record of all money he received, and to report the same to the treasurer annually. The excess over three thousand dollars was to be paid in to the state treasury. This provision was intended to prevent the enormous salaries received by some of the public officers in fees. It was said that the clerk of the Baltimore county court received fifteen thousand dollars annually in fees. Howard district, a part of Anne Arundel county, was erected into a county called Howard. A provision was also made for the erection of another county out of part of Allegany county.⁵⁶

⁵⁵ Art. vii.

⁵⁶ Art. viii, sec. 2.

The constitution of 1851 provided for its own amendment by a convention elected expressly for that purpose. The legislature was required at its first session immediately succeeding the returns of every census of the United States, to pass a law for ascertaining the wishes of the people of the State in regard to the call of a convention for the purpose of amending the constitution. This was not done until February 3, 1864.⁵⁷ The constitution went into effect July 4, 1851. It remained in force until 1864, and is remarkable for its extremely democratic features. All state officials from the governor to the constable were to be elected by popular vote. This provision was a reaction against the very conservative and aristocratic character of the constitution of 1776.

⁵⁷ Act 1864, ch. 5.

APPENDIX

VOTE FOR THE CALL OF THE CONVENTION OF 1850.

	FOR.	AGAINST.
Anne Arundel	815	263
Allegany	1144	55
Baltimore	1682	144
Baltimore City	8069	376
Cecil	1342	365
Caroline	277	140
Charles	90	199
Carroll	695	154
Calvert ⁵⁸		
Dorchester	251	399
Frederick	2793	155
Harford	881	149
Kent	323	234
Montgomery	426	186
Prince George's	162	325
Queen Anne's	489	328
Somerset	356	350
Saint Mary's	129	361
Talbot	393	279
Washington	2646	184
Worcester	460	279
	23423	4935

The official count declared a majority of 18,833 for the convention.

⁵⁸ Returns not given.

VOTE ON THE ADOPTION OF CONSTITUTION OF 1851.

	FOR.	AGAINST.
Anne Arundel	948	1113
Allegany	1333	703
Baltimore	2122	849
Baltimore City	9416	5830
Cecil	1378	638
Caroline	372	340
Charles	160	427
Carroll	1473	1094
Calvert	174	333
Dorchester	511	488
Frederick	3179	943
Harford	1135	875
Kent	384	443
Montgomery	569	717
Prince George's	207	656
Queen Anne's	627	517
Somerset	592	633
St. Mary's	165	533
Talbot	618	340
Washington	2913	688
Worcester	749	456
	29,025	18,616

Majority for constitution, 10,409.

THE POLITICAL ACTIVITIES OF
PHILIP FRENEAU

SERIES XX

Nos. 9-10

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
(Edited 1882-1901 by H. B. ADAMS.)

J. H. HOLLANDER J. M. VINCENT W. W. WILLOUGHBY
Editors

THE POLITICAL ACTIVITIES OF PHILIP FRENEAU

BY
SAMUEL E. FORMAN, Ph. D.

BALTIMORE
THE JOHNS HOPKINS PRESS
PUBLISHED MONTHLY
SEPTEMBER-OCTOBER, 1902

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JOHNS HOPKINS PRESS

The Lord Baltimore Press
THE FRIEDENWALD COMPANY
BALTIMORE, MD.

PREFACE

In this sketch of Philip Freneau I have tried to bring out in its proper proportion the public side of the man's career. There have appeared several accounts of Freneau as a poet, and these are appreciative and just. But as a politician and publicist Freneau has not received the attention which he deserves. Historians have been content to bestow upon him a contemptuous phrase and let him pass. He is a "reptile journalist," a "barking cur," a "low editor," a "democratic scribbler." Such treatment is unfair to the memory of Freneau and is not good history. Any one who will take the trouble to get at the facts of Freneau's life will find that he deserves the gratitude of posterity, not its contempt. It was a long and stormy life and it was lived for human rights and human freedom.

In the prosecution of my work I have been greatly assisted by the Librarians of the New York Historical Society and of the Pennsylvania Historical Society, and to these gentlemen my thanks are due. I am also indebted to the late Professor H. B. Adams and to Dr. J. M. Vincent, of the Johns Hopkins University, for valuable suggestions.

S. E. FORMAN.

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THE POLITICAL ACTIVITIES OF PHILIP FRENEAU

CHAPTER I

YOUTH AND EARLY MANHOOD

Philip Freneau was born of Huguenot parentage in the city of New York, January 13, 1752. His father died when Philip was but a child. His mother upon the death of her husband removed from New York to New Jersey, and with her four children established herself upon the Freneau estate of Mount Pleasant, a settlement just outside of Middletown Point (now Mattawan) in Monmouth county. Philip was given into the hands of good tutors and proved to be a diligent pupil. One of his teachers was the Rev. William Tennant, a divine whose name is still held in blessed memory in Monmouth county. Dr. Tennant was acting president of Princeton College when Freneau entered that institution as a Freshman in 1767.¹ The youth was so well prepared that the president wrote a note to Mrs. Freneau congratulating her upon her son's superior acquirements.² Philip remained at Princeton College for four years, and during that period his future career was largely determined. The college was a hot-bed of whiggism.³ Teachers and students joined in resisting the

¹ Hageman's History of the College of New Jersey.

² Griswold's Poets of America, p. 31.

³ "Several years before a speck of war against the mother country could be discovered, an electric spark of patriotic fire was struck in Princeton which betokened the flame that afterward lighted up New Jersey. James Madison in 1770 wrote to Thomas

pretensions and aggressions of England. The president, John Witherspoon, was one of the signers of the Declaration of Independence. Among the students in whose minds rebellion was germinating were Henry Lee, Hugh Brackenridge, Samuel Spring, William Bradford, Aaron Burr, Frederick Frelinghuysen and James Madison.⁴ With these great spirits Freneau mingled freely. James Madison was his classmate, while Brackenridge, Madison and Freneau formed a friendship which remained firm not only during their college career, but which was dissolved in after years only by death. "These three," says Griswold, "were all gifted with satirical powers which they were fond of displaying as frequently as there were occasions. They joined in lampooning not only the leaders of adverse parties in college, but also those prominent public characters who opposed the growing enthusiasm of the people for liberty. I have before me a considerable manuscript volume of personal and political satires written by them in about equal proportions."⁵ Freneau and Brackenridge tried their hands at verse as well. In the attempt Brackenridge discovered what he could not do, although vanity constrained him to an occasional indulgence in bad verse all his life. Freneau's sophomoric pen, on the other hand, moved easily and gracefully and turned off lines that sometimes sparkled with the light of genius. Some of these youthful pieces were included by Freneau in an edition of his poems published in after years. Most of them are of no consequence, yet they show that Freneau's native talent for verse writing was very strong.

Martin: 'We have no news but the base conduct of the merchants in breaking through the spirited resolutions not to import. The letters to the merchants regarding their concurrence were lately burned by the students of this place in the college yard, all of them appearing in black gowns and the bell tolling. There are about 115 in the college grammar school, all of them in American cloth.' " Princeton and its Institutions, vol. i, p. 101.

⁴ MacLean's History of the College of New Jersey.

⁵ Poets of America, p. 14.

Freneau was graduated in distinguished company in 1771. It is doubtful whether Princeton College has ever sent out a class that contained a larger per cent of celebrated men. Of the eight who then took their degrees, six achieved fame and high position in church, in state, in letters, and in science,⁶ yet neither Freneau nor Madison, apparently, took any of the prizes. In the records of the college there is an account of the commencement exercises of 1771, and the sixth and seventh items of the programme are as follows:

6. An English forensic dispute on the question: Does Ancient poetry excel Modern? Mr. Freneau the respondent, being necessarily absent, his argument in favor of the ancients was read. Mr. Williamson answered him; Mr. McKnight replied.

7. A poem on "The Rising Glory of America" by Mr. Brackenridge, was received with great applause.⁷

A little further down in the account we find that Mr. Madison was also excused from attending the exercises. One would like to know where those two young gentlemen were upon this important occasion. Freneau ought certainly to have been present for he was the largest contributor to the entertainment. In addition to his speech on the poetry of the ancients, he was the principal author of the poem that was read by Mr. Brackenridge and that gained such hearty applause. There can be no doubt that this poem was for the most part composed by Freneau, for Brackenridge himself has told us that such was the case.⁸

⁶The members were: 1. Gunning Bedford, Member of Continental Congress and of the Constitutional Convention of 1787. 2. John Black. 3. H. H. Brackenridge, Judge of the Supreme Court of Pennsylvania and eminent in literature. 4. Donald Campbell. 5. Philip Freneau. 6. Charles McKnight, the most distinguished surgeon of his day. 7. James Madison, President of the United States. 8. Samuel Spring, a celebrated divine.

⁷ MacLean's History of College of New Jersey, vol. i, p. 313.

⁸ Southern Literary Messenger, vol. viii, p. 2; also Hildeburn's Issue of the Press of Pennsylvania, vol. ii, p. 148.

The poem was to have been a joint production, but Brackenridge, recognizing the slowness and heaviness of his own lines when compared with the graceful and spontaneous verses of Freneau, wrote but a very small part, being content to deliver it from the platform and to leave the honors of authorship to his friend.

In this commencement ode, "The Rising Glory of America," Freneau strikes the key-note of his life—resistance to Great Britain. The Massacre at Boston, March 5, 1770, is thus glanced at:

Nor shall these angry tumults here subside,
Nor murders cease through all these provinces,
Till *foreign crowns have vanished from our view*
And dazzle here no more—no more presume
To own the spirit of fair liberty.
Vengeance shall cut the thread, and Britain sure
Will curse her fatal obstinacy.

The following is a clever bit of prophecy for a boy of nineteen; we find in it a constant and favorite theme of the poet—the greatness of America:

I see, I see

Freedom's established reign, cities and men,
Numerous as sands upon the ocean shore,
An Empire rising where the sun descends!
The Ohio soon shall glide by many a town
Of note; and where the Mississippi stream,
By forests shaded, now runs sweeping on
Nations shall grow, and States not less in fame
Than Greece and Rome of old. We too shall boast
Our Scipios, Solons, Catons, sages, chiefs
That in the womb of time yet dormant lie,
Waiting the joyous hour of life and light.

Freneau left college in September, 1771, with his mind full of epics and his heart full of liberty and hatred for oppression. He went to Philadelphia and pretended to read law, but probably he neglected his Blackstone for the society of wits, for he fell in with the whig leaders of the place and established a reputation as an exceedingly clever young scape-grace. It was while in Philadelphia in 1772

that he first saw himself in print. In that year the valedictory ode came out in pamphlet form. The charms of authorship seem to have allured him from serious study, for he soon abandoned law altogether. In the spring of 1772 he left Philadelphia and undertook to teach a school on Long Island but failed miserably. In the autumn of the same year we find him assisting his classmate Brackenridge in the management of an academy on the "Eastern Shore" of Maryland. The following letter to James Madison, besides giving his experience as teacher, shows how restless and aimless was his early manhood:

Somerset county in Maryland,
November 22, 1772.

Sir,

If I am not wrongly informed by my memory, I have not seen you since last April, you may recollect I was then undertaking a School at Flatbush on Long Island. I continued in it thirteen days—but—

Long Island have I bid adieu,
With all its brutish brainless crew.
The youth of that detested place,
Are void of reason and of grace,
From Flatbush hills to Flatbush plains,
Deep ignorance unrivalled reigns.

I am very poetical but excuse it. "*Si fama non venit ad aures*," if you have not heard the rumor of this story (which, by the by, is told in various taverns and eating houses) you must allow me to be a little prolix with it. Those who employed me were some gentlemen from New York, some of them are bullies, some merchants, others scoundrels: They sent me eight children, the eldest of whom was 10 years old. Some could read, others spell and a few stammer over a chapter of the Bible—these were my pupils and over these I was to preside. My salary moreover was £40. There is something else relating to that I shall not at present mention. After I forsook them

they proscribed me for four days and swore if I was caught in New York they would either Trounce or Maim me: but luckily I escaped with my goods to Princeton—where I remained till commencement—so much for this affair.

I have printed a poem in New York called the American Village, containing about 450 Lines, also a few short pieces added; I would send you one if I had a proper opportunity. The additional poems are—A Poem to the Nymph I Never Saw—The Miserable Life of a Pedagogue—and Stanzas on an ancient Dutch House on Long Island—As to the main poem it is damned by all good and judicious judges. My name is on the title page. This is called vanity by some—but “who so fond as youthful bards of fame?”

I arrived at this Somerset Academy the 18th of October and intend to remain here till next October. I am assistant to Mr. Brackenridge. This is the last time I shall enter into such a business; it worries me to death and by no means suits my “giddy, wandering brain.”

I would go over for the gown this time two years, but the old hag Necessity has got such a prodigious grip of me that I fear I shall never be able to accomplish it. I believe if I cannot make this out I must turn quack, and indeed I am now reading Physic at my leisure hours, that is, when I am neither sleeping, hearing classes, or writing poetry—for these three take up all my time.

It is now late at night; not an hour ago I finished a little poem of about 400 lines, entitled a Journey to Maryland—being the sum of my adventures—it begins—

From that famed town where Hudson's flood
Unites with Streams perhaps as good;
Muse has your bard begun to roam—

and I intend to write a terrible satire upon certain vicious persons of quality in New York—who have also used me ill—and print it next fall. It shall contain 5 or 600 lines. Sometimes I write pastorals to show my wit.

Deep to the woods I sing a Shepherd's care,
 Deep to the woods . . . ⁹ call me there,
 The last retreat of Love and Verse I go,
 Verse made me mad at first—and will keep me so.

I should have been glad to have heard from you before now; while I was in college I had but a short participation of your agreeable friendship, and the few persons I converse with and yet fewer whose conversation I delight in, make me regret the loss of it. I have met a variety of rebuffs this year, which I forbear to mention. I look like an unmeaning Teague just turned out of the hold of an Irish Ship. Coming down hither I met with a rare adventure at Annapolis. I was destitute of even a brass farthing. I got clear very handsomely. Could one expect ever to see you again, if I travel through Virginia, I shall stop and talk with you a day or two. I should be very glad to receive a letter from you if it can be conveniently forwarded.

In short "*Non sum qualis crām*" as Partridge says in Tom Jones. My hair has grown like a mop, and I have a huge tuft of beard directly upon my chin. I want but five weeks of twenty-one years of age and already feel stiff with age. We have about 30 students in this academy who prey upon me like Leeches.

"When shall I quit this whimpering pack,
 And hide my head in Accomack?"
 Shall I leave them and go
 Where Pokomokes long stream meandering flows—

Excuse this prodigious scrawl without style or sense. I send this by Mr. Luther Martin who will forward it to Col. Lee—and he to you I hope. Mr. Martin lives in Accomack in Virginia this side the bay.

Farewell and be persuaded I remain your truly humble servant and friend,

PH. F-R-E-N-E-A-U¹⁰

⁹ Illegible.

¹⁰ Manuscript in the Archives of the Department of State at Washington.

This letter keeps us informed of Freneau's doings as far as the autumn of 1773, after which time we lose sight of him for a year or two. It is impossible to say where he was or what he was doing immediately after leaving Maryland, although we may confidently assume that on all occasions and in all places he did pretty much as he pleased. When we next meet with him he is in New York, the hot-bed of toryism, lampooning the tories. In 1775 we find him paying his respects in the columns of Hugh Gaine's "*Mercury*" to General Gage, who had proclaimed in June of that year that the provinces were in a state of rebellion and out of the King's protection. Freneau professed, as rebels are wont to profess, to be deeply injured by the epithet "rebel."

"*Rebels you are*"—the British Champion cries;
Truth, stand thou forth and tell the wretch he *lies*.
 Rebels! and see this mock imperial lord
 Already threats these rebels with a *Cord*!

Americans! at Freedom's fane adore!
 But trust to Britain and her flag no more.
 The generous genius of their isle has fled
 And left a mere impostor in his stead.

To Arms! To Arms! and let the Murdering Sword
 Decide who best deserves the *hang-man's* cord.
 Nor think the hills of Canada too bleak
 When desperate freedom is the prize you seek.
 For *that* the call of honor bids you go
 O'er frozen lakes and mountains wrapped in snow.

Haste! to your tents, in iron fetters bring
 Those slaves that serve a tyrant and a king.
 So just, so virtuous is your cause, I say
 Hell must prevail if Britain gains the day.¹²

¹¹ Hugh Gaine, an Irishman, was the editor of the *New York Mercury*. His journal was edited in the interest of the whig party until the British troops approached New York in 1776. Then he went over to the royal cause. His double course is severely criticised by Freneau in his poem entitled: "The Political Biography of Hugh Gaine."

¹² The poem from which those lines are taken is addressed "To The Americans, on the rumored approach of the Hessian forces."

Thus the young man, without the slightest hesitation, and without any authority or responsibility, declares in the most fervid language for American Independence and proclaims a war upon England a twelve-month before Jefferson drew up the famous Declaration of the Fourth of July, 1776. In truth, such daring lines as these quickened the minds of the colonists and did much to create the sentiment which made the Declaration of Independence a plausible thing. To strong and brave minds, to the Henrys, and Otises and Hancocks, the only solution of the difficulties with the mother country was to be found in the absolute severance of all political ties. In this opinion Freneau shared to the fullest extent. In the year 1775 the opinion-makers of the Revolution were exceedingly busy and none were more active than the young poet. In verse, sometimes good, more frequently bad, always bold and always effective, he held up for the detestation of mankind, General Gage, Lord North, King George the Third, and the royal Governors, wherever he could find them. One of the shortest of these poems will serve to show how the cutting and slashing of the pen preceded the cutting and slashing of the sword, and how telling was Freneau's work as a precursor of a great movement. The poem is given entire.

EMANCIPATION FROM BRITISH DEPENDENCE.

Libera nos, Domine, Deliver us, O Lord,
Not only from British Dependence but also—

From a junto that labor for absolute power,
Where schemes disappointed have made them look sour,
From the lords of the council who fought against freedom
Who still follow on where delusion shall lead them,

From a group at St. James that slight our petitions,
And fools that are waiting for further submissions,
From a nation whose manners are rough and abrupt,
From scoundrels and rascals whom gold can corrupt,

From pirates sent out by command of the king
To murder and plunder but never to swing,
From Wallace and Graves and *Vipers* and *Roses*¹³
Whom, if Heaven pleases we will give bloody noses,

From the valliant Dunmore with his crew of banditti,
Who plunder Virginians at Williamsburg city,
From hot-headed Montague mighty to swear,
The little fat man, with his pretty white hair,

From bishops in Britain, who butchers are grown,
From slaves that would die for a smile of the throne,
From assemblies that vote against Congress proceedings,
(Who have seen the fruit of their stupid misleadings),

From Tyron,¹⁴ the mighty, who flies from our city,
And swelled with importance disdains the committee;
(But since he is pleased to proclaim us his foes,
What the devil care we where the devil he goes);

From the caitiff Lord North, who would bind us in chains,
From our noble King Log, with his tooth-full of brains,
Who dreams and is certain (when taking a nap)
He has conquered our lands, as they lay on his map,

From a Kingdom that bullies and hectors and swears,
I send up to heaven my wishes and prayers,
That we disunited, may freemen be still,
And Britain go on—to be damn'd if she will.

The young verse-maker was sure as to the course to be pursued by America, but he was not sure as to the problem that confronted his individual life. The poetry in his nerves unbalanced him and weakened his purposes. His property in New Jersey was neglected, and gradually began to slip from his hands. The young patriot followed his instinct—often a surer guide than reason—and abandoned himself to verse-making. The muse he chose was satire. The troublous times, he said, admitted of no other choice.

In doing this Freneau was building better than he knew. The pieces which he sent to the press every week were

¹³ "Wallace and Graves," British naval officers. "Vipers" and "Roses," the names of two ships in the English service.

¹⁴ The last royal governor of New York.

rarely ineffectual. They made the tories wince and they inspired the whigs with hope and courage. They brought him no money, yet they did better than this. They rendered the country an important service, and they brought their author lasting fame: they made him the “Poet of the Revolution.”

CHAPTER II

THE POET OF THE REVOLUTION

In 1776, Freneau left New York and its tory citizens to their own devices and embarked upon a vessel bound for the Danish West Indies. According to one account he sailed as the agent of a New York trading firm; another account states that he shipped as a common sailor and worked his way up to the post of captain.¹ It is certain that he learned the art of navigation and that he soon became the master of a ship. From this time on we shall find him a rover, now upon the sea, now upon the land; now a captain, now an editor, but always a poet, writing for the American cause.

His first voyage was to the Virgin Islands, where he seems to have remained for some time. He fell in love with the natural beauties of the southern isles, and conceived a disgust for their institutions. Slavery was always an abomination in his eyes. The mild form of northern servitude was distasteful to him, but the degraded condition of the West Indian slave awakened the warmest indignation in his generous mind. In a poem descriptive of the island of Santa Cruz, he expresses in sorrowful strain his repugnance to the ugly form of human bondage found there. "It casts," he says in a preface to this poem, "a shade over the native charms of the country; it blots out the beauty of the eternal spring which Providence has there ordained to reign; and amidst all the profusions of beauties which nature has scattered—the brightness of the heavens, the mildness of the air, and the luxuriance of the vegetable kingdom—it leaves me melancholy and discon-

¹ American Magazine of History, vol. xvii, p. 124.

solate. Thus the earth which, were it not for the lust of pride and dominion, might be an earthly paradise, is, by the ambition and overbearing nature of mankind, rendered an eternal scene of desolation, woe, and horror: the weak go to the wall while the strong prevail.”²

This hatred of slavery was not an evanescent passion of youth doomed through the hardening processes of years to die; it was a settled principle of his life and conduct. In another poem, written in middle life, he thus holds up the torch of liberty, and with it runs ahead of his times by half a century:

“O come the time and haste the day
When man shall man no longer crush;
When reason shall enforce her sway,
Nor these fair regions raise one blush,
Where still the *African* complains,
And mourns his yet unbroken chains.”³

“In after life,” says Duyckinck, “when the poet himself became the owner of slaves in New Jersey, he uniformly treated them with kindness, manumitted them in advance of the Emancipation Act in the State, and supported on the farm those of them who were too old to take care of themselves.”

When Freneau returned to America, independence had been declared and the Revolution was progressing with varying fortune. The poet threw himself into the struggle with a poet’s ardor. One of his first acts after fairly getting upon land was to ratify the Declaration of Independence in four hundred spirited verses. This poem, entitled “American Independent,” was printed at Philadelphia in 1778 at the press of Robert Bell, the printer of Thomas Paine’s “Common Sense.” When foreign troops were ravaging the land, when the principal cities were in possession of the enemy, when the Continental Army at Valley Forge was starving, when toryism threatened to wreck the cause of liberty, Freneau’s animating voice was heard.

² United States Magazine, 1779.

³ Poems, edition of 1795.

Americans! revenge your country's wrongs
To you the honor of the deed belongs.
Expel yon thieves from these polluted lands,
*Expect no peace*⁴ till haughty Britain yields,
Till humbled Britons quit your ravaged fields.
No dull debates or tedious councils know,
But rush at once embodied on your foe!
Your injured country groans while yet they stay,
Attend her groans, and force their hosts away.
Your mighty wrongs the tragic muse shall trace,
Your gallant deeds shall fire a future race.
To you may Kings and potentates appeal,
You may the doom of jarring nations seal.
A glorious empire rises bright and new,
Firm be its base, and it must rest on you.
Fame o'er the mighty pile extends her wings,
Remote from princes, bishops, lords, and kings,—
Those fancied gods, who famed through every shore,
Mankind have fashioned and like fools adore.

Freneau kept his eye upon the events of the day and cheered and exhorted and celebrated as the poet-general of a revolution should. But he was not content to lurk and write. In 1778 New Jersey became the battle-ground of the revolution, and the region of the poet's home was filled with the soldiery of the contending parties. The battle of Monmouth was fought almost within sight of his ancestral door. Philip shouldered his gun for the defense of his fireside. He entered the army as a private and was promoted to the rank of sergeant.⁵ His career as a soldier was brief and unimportant, but it served to show the stuff of which he was made.

Freneau soon laid down the sword for the pen. The year following the battle of Monmouth (1779) was a busy one, and was more profitably spent than if he had remained in the field. Poem after poem came out to revive the flagging spirits of the revolutionists. His old college-mate and colleague in poetry, Hugh Brackenridge, was in Philadelphia trying to drive the wolf from the door by

⁴ Aimed at Lord North's "Conciliating Bills" which arrived in New York in April, 1778, and which conciliated nobody.

⁵ Jerseymen in the Revolution, p. 465.

editing "The United States Magazine, A Repository of History, Politics and Literature." The columns of this periodical were open to Freneau and he became one of its principal contributors. Brackenridge used a free lance and his magazine was feared and hated.⁶ In addition to the poems that were written on the voyage to the West Indies, there appeared in this magazine Freneau's "King George the Third's Soliloquy," and his "Dialogue between his Britannic Majesty and Mr. Fox." The object of these pieces was to urge on to carnage and conquest rather than to awaken feelings of the sublime and beautiful. They are blunt, coarse appeals to the Americans to "up and at the bloody red coats," and there is no poetry in them. The British army is characterized as a band of devils that it would be a mercy to rid the earth of. George III in soliloquy, thus describes his method of raising a force to march against America:

Is there a robber close in Newgate hemmed?
 Is there a cut-throat fettered and condemned?
 Haste loyal slaves, to George's standard come,
 Attend his lectures when you hear the drum!
 Your chain I break; for better days prepare;
 Come out my friends from prison and from care.
 Far to the West I plan your desperate sway,—
 There 'tis no sin to ravage, burn, and slay,
 There without fear your bloody aims pursue,
 And show mankind what English thieves can do.

In the dialogue between Fox and King George, the liberal-minded and far-seeing statesman thus advised his monarch:

In one short sentence take my whole advice,
 (It is no time to flatter and be nice)
 With all your soul for instant peace contend,
 Then shall you be your country's truest friend;
 Peace, instant peace, may stay your tottering throne,
 But wars and death and blood can profit none.
 Withdraw your arms from the American shore,
 And vex her ocean with your fleet no more;
 Implore the friendship of the injured states,
 Nor longer strive against the stubborn fates.

⁶ Southern Literary Messenger, vol. vii, p. 3.

But the haughty monarch would not listen to Fox, or to any one else. The war went on by land and by sea, and whether by land or by sea, Freneau was prompt to record in "superior [?] lays" the glorious deeds of the Americans. In 1779, the gallant Paul Jones of the *Bon Homme Richard*, gloriously defeated Captain Pearson of the *Serapis*, and the victory was duly celebrated by our poet, and the victor thus urged on to further conquest:

Go on great man to scourge the foe,
And bid these haughty Britons know
They to our thirteen states shall bend;
The stars that veiled in dark attire
Long glimmered with a feeble fire,
But radiant now ascend.

Bend to the stars that flaming rise
On western worlds, more brilliant skies,
Fair Freedom's reign restored.
So when the Magi came from far
Beheld the God-attending star,
They trembled and adored.

"The United States Magazine" died in the first year of its life and its talented editor abandoned journalism and sought and gained distinction in law. Freneau was in no sense the editor of this magazine, as has been stated so frequently.⁷ He simply gave a helping hand to his friend Brackenridge, who was the real proprietor.

After the magazine had gone under, Freneau ventured again upon the sea. This time he sailed for the West Indies with letters of marque against British commerce, commanding the *Aurora*, a smart little craft fitted out for privateering.⁸ But Freneau's naval achievements were destined to be of no greater importance than his career as a land soldier. When his vessel was well beyond the

⁷ See Griswold's *Male Poets of America*, p. 32, and Alibone's *Dictionary of Authors*.

⁸ Forman's *Journey down the Ohio*, p. 10. From Freneau's own account of this voyage, it does not appear that he was the actual commander. See his "Some Account of the Capture of the ship *Aurora*" recently published for the first time.

capes at the mouth of the Delaware Bay, she was pursued, and after a sharp engagement, was captured by the British cruiser *Iris*. The captives were taken to New York and confined in a British prison-ship that lay moored off the battery. Freneau was placed upon the *Scorpion*, where he was kept two months, and then, when dangerously sick of a fever, was removed to the hospital-ship *Hunter*, "to all hospitals disgrace." From the *Hunter* in a short time he escaped, broken and emaciated by the cruel experiences through which he had passed. Of course the incident became the occasion of a poem. The whole story is told in "The British Prison-Ship," in four cantos, written and published in 1781.

Freneau wrote nothing for the American cause that was more effective than this piece. In it the cruelty and inhumanity of the British were depicted by the hand of one who had himself seen and suffered. "The picturesque incidents of the voyage which is described; the animated action of the capture; the melancholy circumstances of the prison-ship contrasted with the happy scenes of the shore; the stern terrors of the Hospital, are all in Freneau's best vein."⁹ The following lines are too realistic to be untrue:

Such food they sent to make complete our woes,—
It looked like carrion torn from hungry crows:
Such vermin vile on every joint were seen,
So black, corrupted, mortified, and lean,
That once we tried to move our flinty chief,
And thus addressed him, holding up the beef:
"See, Captain, see! what rotten bones we pick;
What kills the healthy cannot cure the sick;
Not dogs on such by Christian men are fed,
And see, good master, see what lousy bread!"
"Your meat or bread," this man of death replied,
"Tis not my care to manage or provide—
But this, base rebel dogs, I'd have you know
That better than your merit we bestow."

When the poet escaped from the clutches of the British, he returned to Philadelphia and slowly regained his health.

⁹ Poems of the Revolution, edited by E. A. Duyckinck, p. 10.

He soon resumed his post as verse-chronicler of the revolution and followed with anxious eyes the closing scenes of the struggle. On the eighth of October, 1781, he addressed these savage and semi-prophetic lines to the proud Cornwallis:

Would thou at last with Washington engage,
 Sad object of his pity not his rage?
 See round thy posts how terribly advance
 The chiefs, the armies, and the fleets of France.
 Fight while you can for warlike Rochambeau
 Aims at your head his last decisive blow;
 Unnumbered ghosts from earth untimely sped,
 Can take no rest till you like them are dead.
 Then die, my lord; that only chance remains
 To wipe away dishonorable stains.
 For small advantage would your capture bring—
 The plundering servant of a bankrupt king.¹⁰

A month later came Yorktown and the consummation of American Independence. Freneau, like all Americans, hated Cornwallis bitterly, and gloated over the fallen chief in coarse and careless verse. With this malediction he sped him from our shores:

Now curst with life, a foe to man and God,
 Like Cain we drive you to the land of Nod;
 He with a brother's blood his hands did stain,
 One brother he,—you have a thousand slain.
 And may destruction rush with speedy wing,
 Low as yourself to drag each tyrant king.¹¹

The war was over but there was aftermath enough to keep the patriotic pen of Freneau in motion. When the traitor Arnold left New York in December, 1781, the poet's fiercest and choicest curse went with him; the battle of Eutaw Springs was celebrated in a lyric that Scott learned by heart and regarded as one of the finest things in the language; Washington, on his way to Virginia was greeted in Philadelphia by a worthy ode; the rejoicing over the recognition of National Independence stirred the poet

¹⁰ Poems Relating to the Revolution, p. 121.

¹¹ *Ibid.*, p. 132.

to one of his highest flights.¹² Taking it altogether, the year 1782 was a most productive one. Freneau seems to have settled down to literature with the purpose of making a living out of it. He wrote constantly and much, both in prose and verse, for "The Freeman's Journal," throughout the three years of its existence.

Freneau was now enjoying fame as poet, essayist and patriot, but money was not forthcoming. America was too poor to pay for literature and the poet was driven to seek bread upon the water. Next to literature he loved the sea. He became captain of a vessel and it was a common occurrence of his life to sail down to the West Indies with a cargo of grain, and bring up a cargo of molasses and poetry. In 1784, we find him wandering about among the ruins of old Port Royal and riming the sad condition of that unfortunate and desolate place. For five or six years without interruption, he led the hardy life of a tar.

In April, 1789, George Washington proceeded in triumph through the States to New York to be inaugurated as president. "Thursday last between two and three o'clock," says the "Gazette of the United States" of April 25, 1789, "the most illustrious president of the United States arrived in this city. At Elizabethtown he was received by a deputation of three senators and five representatives of the United States, and the officers of the state and corporation, with whom he embarked on the barge for the purpose of wafting him across the bay. It is impossible to do justice to an attempt to describe the scene exhibited in his Excellency's approach to the city." In another column in the same number of the Gazette is this notice:

"Thursday, April 23, arrived here the schooner *Columbia*, P. Freneau, in 8 days from Charleston. On board was Dr. King from S. America, with a collection of natural curiosities, particularly a male and female ourang-outang."

¹² Poems of the Revolution, pp. 201, 260, 270.

Captain Freneau, with Dr. King and his monkeys on board, brought his ship into line and sailed up the bay with the gay and magnificent procession of boats that escorted the president-elect to the capital city. When the poet landed he found himself in the midst of old friends. There was his room-mate and classmate, James Madison, the young "father of the constitution"; there was the ambitious and unscrupulous Aaron Burr; and, the rising Henry B. Livingston, boon companions at Princeton. These men, now powerful in the nation, were glad to grasp the hand of their old friend, for they recognized in him one almost as famous as themselves and one not inferior in talent. Freneau was charmed by the new and invigorating associations of New York life. He gave up his ship and again took up his pen. He made friends with the leading democrats, and was soon conspicuous as a champion of democracy. The pen of a contemporary has left us a picture of him as he moves about in printing offices and government halls, or stands chatting with senators and generals. "He was somewhat below the ordinary height; in person, he was thin yet muscular; his countenance was traced by care; he was mild in enunciation, neither rapid nor slow, but clear, distinct and emphatic. His forehead was rather beyond the medium elevation; his eyes a dark gray, occupying a socket deeper than common; his hair a beautiful iron gray. He was free of all ambitious displays. His habitual expression was pensive. His dress might have passed for that of a farmer."¹³

Freneau found employment as a writer for the *New York Daily Advertiser*.¹⁴ He does not seem to have been

¹³ Sketch of Freneau in Dr. J. W. Francis' *Cyclopedia of American Literature*, vol. i, p. 333.

¹⁴ "About 1790," says Major Samuel Forman in his "Journey down the Ohio," "Captain Freneau married my sister Eleanor." Eleanor Forman was the daughter of Samuel Forman of New Jersey, one of Freneau's neighbors, and a hero of the revolution. The poet and Eleanor seemed to have been drawn together by an affinity of tastes, for she was a verse-maker as well as he.

its editor, as Hudson and others assert, but its manager or superintendent—a kind of man-of-all-work.¹⁵ One of his co-laborers upon the Advertiser was John Pintard, a warm personal friend, and the translating-clerk in the Department of State. Freneau worked vigorously for the Advertiser, and he was soon recognized in political circles as a strong ally of the anti-federalists.

In 1790, Thomas Jefferson came to New York to assume the duties of Secretary of State. He had just come from Paris where he had been an eye witness of the storming of the Bastile and had learned from terrible object-lessons to respect the power of the masses. When he arrived in New York, his democracy was at a white heat and he eagerly set about building up a democratic party. He met Freneau and found him a congenial spirit. The true eye of the great politician saw in the poet good timber for the edifice it was his intention to rear. Jefferson, as a well-known patron of letters, was in a position to make overtures to any man of distinguished talents. An opportunity to render Freneau good service soon presented itself. When the government removed to Philadelphia early in 1791, John Pintard, the French translator in Jefferson's office, resigned his place, declining to leave New York for the pitiable stipend of two hundred and fifty dollars per annum, the amount appropriated for the translating-clerk. Madison and Henry Lee urged Jefferson to appoint Freneau to the position made vacant by Pintard. Jefferson gladly acceded to their request, and on February 28, 1791, wrote to Freneau as follows:

“Sir: The clerkship for foreign languages in my office is vacant. The salary indeed, is very low, being but two

The writer has seen in manuscript some very clever verses written by Mrs. Freneau. For several years before marriage, their correspondence is said to have been conducted largely in rhyme. The Freneau home, when we get glimpses of it, was a happy one, albeit unthrifty.

¹⁵ Hudson's Journalism in America, p. 175.

hundred and fifty dollars; but also, it gives so little to do as not to interfere with any other calling the person may choose which would not absent him from the seat of government. I was told a few days ago that it might perhaps be convenient for you to accept it. If so, it is at your service. It requires no other qualification than a moderate knowledge of the French. Should any thing better turn up within my department that might suit you, I should be very happy to bestow it as well. Should you conclude to accept the present, you may consider it as engaged to you, only be so good as to drop me a line informing me of your resolution.”¹⁶

We have not Freneau’s reply to this letter but we know that he was in no hurry to accept the offer. It was his intention to remove from New York, his work upon the Advertiser rendering him but slender returns; but he had misgivings about going to Philadelphia. His immediate project was to settle in New Jersey and to establish a country newspaper, a plan which he long cherished and one which he finally carried out. Madison, however, saw the value of the man as a democratic publicist and would not listen to his burying himself in the obscurity of a New Jersey village. He went to Freneau and reasoned with him, endeavoring to make him sensible of the advantages that Philadelphia offered for his private undertaking over a small country town. He explained the nature of the services required of him as translator in the Department of State. Freneau had thought that he would be expected to turn English into French, and feeling his incompetency for this work, delicacy forbade him to accept the position. Madison dissipated this objection by assuring him that no such task would be required of him. Freneau listened to the solicitations of his friend and decided to go to Philadelphia at once. Madison wrote to Jefferson stating that he might expect Freneau in Philadelphia in a very short

¹⁶ Jefferson’s Works, vol. iii, p. 215.

time. The letter contains a tribute to Freneau's character and genius, and principles, and closes with these words: "It is certain that there is not to be found in the whole catalogue of American Printers [Editors] a single name that can approach rivalship."¹⁷

But Freneau halted in New Jersey, and Jefferson concluded that he had abandoned the notion of going to Philadelphia. On May 9 Jefferson wrote to Madison:

"Your favor of the first came to hand on the third. Mr. Freneau has not followed it. I suppose, therefore, he has changed his mind back again, for which I am sorry."¹⁸ A few days after this Jefferson wrote to Thomas Mann Randolph, his son-in-law, as follows:

"I enclose you Bache's as well as Feno's papers. You will have perceived that the latter is a paper of pure toryism, disseminating the doctrine of monarchy, aristocracy, and the exclusion of the people. We have been trying to get another weekly or half-weekly set up, excluding advertisements, so that it might go through the States and furnish a whig vehicle of intelligence. We hoped at one time to have persuaded Freneau to set up here but failed."¹⁹

Jefferson did not intend to lose Freneau if he could help it. Further pressure was brought to bear upon the editor. Gen. Henry Lee, another friend, wrote to him and urged him to embrace the opportunities of a career at the seat of government.²⁰ The general promised aid in securing subscribers for the projected paper and, (Parton says) advanced money for the enterprise.²¹ Jefferson, on July 21, 1791, again wrote to Madison with the view of getting Freneau. "I am sincerely sorry," he says, "that Freneau has declined coming here. Though the printing business be

¹⁷ Writings of Madison, vol. i, p. 535.

¹⁸ Jefferson's Writings, vol. v, p. 330.

¹⁹ *Ibid.*, vol. v, p. 336.

²⁰ Randall's Life of Jefferson, vol. ii, p. 74.

²¹ Parton's Life of Jefferson, p. 433.

sufficiently full here, yet I think he would set out on such advantageous grounds as to have been sure of success. His own genius, in the first place, is so superior to that of his competitors. I should have given him the perusal of all my letters of foreign intelligence and all foreign newspapers, the publication of all proclamations and other public notices within my department, and the printing of the laws, which added to his salary would have been a considerable aid. Besides this, Fenno's being the only weekly paper and under general condemnation for its toryism and its incessant efforts to over-turn the government, Freneau would have found that ground as good as unoccupied."

This encouragement from such influential quarters finally caused Freneau to abandon his original scheme and settle in Philadelphia. On the twenty-fifth of July, four days after Jefferson's last letter to Madison, he himself wrote to Madison:

"Some business detains me here [in New Jersey] a day or two longer from returning to New York. When I come, which I expect will be upon Thursday, if you shall not have left the city, I will give you a decisive answer relative to printing my paper at the seat of government instead of New York. If I can get Mr. Childs to be connected with me on a tolerable plan I believe I shall sacrifice other considerations and transfer myself to Philadelphia."

Freneau came to terms with the printer, Childs, and in a short time repaired to Philadelphia, leaving his family temporarily behind him. In the course of a few days after his arrival he received the following document:

"Philip Freneau is hereby appointed clerk for foreign languages in the office of Secretary of State, with a salary of two hundred and fifty dollars a year, to commence from the time he shall take the requisite oaths of qualification. Given under my hand and seal this 16th day of August, 1791,

THOMAS JEFFERSON."²²

²² Jefferson MS. Archives of State Department at Washington.

This is the story of Freneau's coming to Philadelphia to set up a paper and of his appointment to an office under Jefferson. It is a simple story and one that is not suggestive of crookedness upon the part of any of the persons connected with it. As far as Freneau is concerned, his course was one of absolute single-mindedness throughout. He intended to start a newspaper of his own, and a democratic newspaper at that. If he did not set up one in New Jersey, then he would start one in New York. Jefferson, Madison, and other democrats, hearing of this, held out, in a perfectly honorable way, inducements for him to establish his paper in Philadelphia, and after due reflection he adopted the counsel of his friends. Those friends knew that he intended to edit a paper—that indeed he must do something of the kind or starve. They knew, moreover, that he was a fierce and uncompromising democrat and that he would conduct the paper according to his own notions. What their motives were in getting such a man to come to the seat of government is very easy to determine. They wanted the influence of his pen for party purposes. Whether Jefferson was justified in using patronage for the accomplishment of his purpose is a problem of ethics for those who are interested in the question to solve. It may be here remarked that from the beginning of our government to the present day influential editors have fared very well in the matter of federal appointments. With Freneau, the establishing of his paper in Philadelphia was purely a matter of business, and it is difficult to conceive how there could have arisen in his mind any quibbling as to the rightfulness or wrongfulness of his earning a little additional money by translating. The matter would not be worth referring to, if, as we shall see later, so much had not been made of it by the enemies of Freneau and of Jefferson.

We shall now take up a chapter in Freneau's history which has not received the consideration it deserves. We shall follow Freneau in his career as an editor. We all

know something of him in a vague sort of way as a poet. We know a little of him, too, as an editor, but, unfortunately what we know of him as an editor is false knowledge. Washington Irving called him a "barking cur," and succeeding historians down to Goldwin Smith, who refers to him as a "reptile journalist," have been content to perpetuate a false and unjust estimate of the man.

CHAPTER III

THE DEMOCRATIC EDITOR

The plan and purposes of the new paper were published at considerable length. The *Gazette* was to appear every Wednesday and Saturday;¹ the subscription price was to be three dollars *per annum*; the news published was to be of national character, especial attention being promised to the doings of the national government; the columns of the *Gazette* were to be open to all original and interesting productions whether prose or verse; political discussion was to be conducted with perfect fairness and the greatest latitude; the debates of congress and reports of departments were to be printed; all important books were to be reviewed; advertisements were to be allotted a certain space and were not to encroach upon the columns intended for general reading matter.

The title of the paper, "The National *Gazette*," suggests the aims of its founder. It was to be a paper for circulation in all parts of the union. It was to be an organ with national influence and a national constituency as opposed to those papers which appealed to local constituencies and which rarely found their way out of the neighborhood in which they were printed. This was the idea of the editor and his advisers, and every effort was made to keep the paper cosmopolitan and to get it into distant parts.

Freneau pushed forward the publication of the *Gazette* and the first number came from the press several days before it was announced to appear. In the first issues there was nothing to shadow forth that violent partisanship which later was to make its editor one of the best hated

¹ It was actually published every Monday and Thursday.

men in America. In one respect, indeed, it offended from the beginning the opinion of a large and influential element of the American people. It supported without reserve the principles of the French revolution. Its columns were filled with equality and fraternity, and Tom Paine and Rousseau. Aside from this undisguised endorsement of what was then to many minds, political heresy, its tone was mild, and its articles harmless and colorless. Its professed policy was broad and patriotic. It early maintained the doctrine that the union between the states should be social and commercial as well as political. "The interests of the northern and southern states are inseparable forever. It seems to have been the design of nature in her formation and distribution of that part of North America known by the name of the United States, that a mutual dependence should take place between the northern and southern inhabitants."² But the tendency of the paper was unmistakable. It appealed to the common people as the true rulers of government. Its evident purpose was to evoke and energize the spirit of democracy.

Was there need for such a paper? Was the spirit of democracy flagging and the tide running toward a government, strong, centralized, and aristocratic? Was the constitution, as Jefferson says it was, galloping toward monarchy? We cannot understand Freneau and the part he played in public affairs until we have found answers to these questions, and to answer them we must try to get as clear a notion as possible of the state of political opinion in the United States in 1791.

To do this let us begin with the rulers. Let us interrogate those who were in the saddle at the time, and determine the direction they were galloping by the tendency of their thought; for as men think, so are they:

If we begin with the President, there can be no doubt of Washington's perfect loyalty to the constitution and to

² National Gazette, November, 1791.

a republican form of government. In 1786, indeed, he recognized that times were changing, and that monarchy was in the air,³ but he deprecated with the utmost horror the progress of monarchical sentiment. Freneau has attested to the soundness of the great chief's republicanism in these lines:

"Oh Washington, thrice glorious name!
What due rewards can man decree?
Empires are far below thy aim,
And *sceptres* have no charm for thee.
Virtue alone has your regard,
And she must be your great reward."

We pass from the President to the Vice-president. John Adams has written many hundreds of pages upon the subject of government, but human reason cannot fathom his meaning and what he really thought will never be known.⁴ Madison, open and above board, spoke of him to Washington as aiming at mixed monarchy,⁵ but Adams said he was not aiming at monarchy, and we must believe he knew his motives better than Madison knew them. We cannot get from his writings what Adams thought, but we can learn from them what he *felt*. He hated democracy, he loved a strong government. "Democracy,"⁶ he says, "never has been and never can be so desirable as aristocracy or monarchy, but while it lasts, is more bloody than either. Remember, democracy never lasts long. It soon wastes,

³ Sparks' Life and Writings of Washington, vol. ix, p. 187.

⁴ An English reviewer of the day thought he understood Adams: "The great and leading idea which runs through the ingenious and learned works of Mr. Adams is that a mixture of the three powers, the regal, the aristocratical and the democratical, properly balanced, comprises the most perfect form of government." American Daily Advertiser, Nov., 1792. Such an interpretation must have been based upon such statements as these: "The English Constitution is the only scientifical government." John Adams' Works, vol. vi, p. 118. "A hereditary first magistrate would perhaps be preferable to an elective one."

⁵ In a conversation with the President in 1792, Writings of Madison, vol. i, p. 558.

⁶ John Adams' Works, vol. vi, p. 483.

exhausts, and murders itself. There never was a democracy that did not commit suicide." And again: "It is true and I rejoice in it, that our president has more power than the stadt-holders, the doges, the archons, or the kings of Lacedaemon." He expresses his profound distrust of self-government in these words: "The proposition that the people are the best keepers of their own liberties is not true. They are the worst conceivable, they are no keepers at all; they can neither judge, act, think, or will, as a political body. Individuals have conquered themselves; nations and large bodies never."⁷ In a letter to his democratic cousin, Samuel Adams, John Adams, in a few inadvertent words, betrays his feelings towards popular liberty. Samuel Adams had advanced the proposition that the love of liberty is interwoven in the soul of man. John Adams, candidate for popular favor, replied: "So it is, according to La Fontaine, in that of a wolf."⁸ Late in life, John Adams said that his political downfall was largely due to the writings of Philip Freneau.⁹ He would more justly have attributed his retirement to his own writings.

When we come to Washington's first cabinet we find a house divided against itself. Relying upon his own vast authority and the rectitude of his intentions, the president invited to assist him in governing, two men whose views upon government diverged as widely as possible. Thomas Jefferson and Alexander Hamilton, by every principle and implication of their being, were unfitted to work together, and Washington's attempt at a mixed cabinet failed. In a short time the imperious and imperial Hamilton dominated Washington and the administration, and Jefferson was forced to retire.

What were Hamilton's views upon government? If he could have had his will, what form of government would

⁷ Works of John Adams, vol. i, p. 587.

⁸ Works of Samuel Adams.

⁹ Works of John Adams.

have been instituted? What was the tendency of our government when it was under his direction? To get an answer to this question, we may take the testimony first of a friend, then of an enemy. Gouverneur Morris, an intimate friend and co-worker in politics, said of Hamilton: "He hated republican government because he confounded it with democratic government. One marked trait of the general's character was his pertinacious adherence to opinions once formed. He never failed on every occasion to advocate the excellence of and avow his attachment to monarchical government."¹⁰ Thomas Jefferson corroborates this language by putting the following words in Hamilton's mouth; words, Jefferson avers, which were written down almost immediately after they were spoken: "I own it is my opinion, although I do not publish it in Dan and Beersheba, that the present government is not that which will answer the ends of society by giving stability and protection to its rights, and that it will probably be expedient to go to the British form."¹¹

Hamilton's correspondence is replete with lugubrious apprehensions that the government by the people might fail.¹² The people were to him "*informe ingens, cui lumen ademptum.*"¹³ In a letter to Theodore Sedgwick he speaks of democracy as a virulent poison, that was threatening to destroy the life of the nation.¹⁴ In 1802, when he had been unhorsed and Jefferson was in the saddle, he writes to his old friend and fellow-aristocrat, Morris, bitterly complaining of his fate: "Mine is an odd destiny. I am still laboring to *prop the frail and worthless fabric.* Yet I have the murmurs of its friends no less than the curses of its foes for my reward. What can I do better than withdraw from the scene? Every day proves to me more and more

¹⁰ Sparks' *Gouverneur Morris, Life and Works*, vol. iii, p. 260.

¹¹ Ford's "Jefferson's Writings," vol. i, p. 169.

¹² See Hamilton's *Works*, vol. v, p. 441; vol. vi, p. 54; vol. iii, p. 260.

¹³ *Ibid.*, vol. vi, p. 540.

¹⁴ *Ibid.*, vol. vi, p. 568.

that this American world was not made for me.”¹⁵ At a banquet in New York, in reply to a toast Hamilton uttered these remarkable words: “Your people, sir, your people are a great beast.”¹⁶ But enough of quotations. Everybody knows now as well as Jefferson knew in 1791 that Alexander Hamilton hated democracy and that he had little faith in the government that he had helped to establish.

It is of interest to note also what the lesser lights, what senators and representatives and diplomats of the time thought of democracy. The young and eloquent Fisher Ames, the confidential friend of Hamilton and a leader in the house of representatives, declared democracy to be the isthmus of a middle state, nothing in itself. Like death it was the dismal passport to a more dismal hereafter. He thought our nation began self-government without education for it. “Like negroes,” he says, “freed after grown up to man’s estate, we are incapable of learning and practicing the great art of taking care of ourselves.”¹⁷ He greets Hamilton’s sympathetic ears with these words: “Our government is becoming a mere democracy which has never been tolerable or long tolerated.”¹⁸ And again, in an explosion of disgust and despair he cries: “Our country is too big for union, too sordid for patriotism, too democratic for liberty! What is to become of it, He who made it best knows.”¹⁹

Gouverneur Morris has answered for Hamilton and may now answer for himself on the subject of democratic government. Writing from Paris to Rufus King he says: “The people, or rather the populace—a thing which, thank God, is unknown in America—are flattered with the idea that they are under no restraint except such as might be

¹⁵ Hamilton’s Works, vol. vi, p. 530.

¹⁶ Adams’ History of the United States, vol. i, p. 85.

¹⁷ Works of Fisher Ames, vol. i, p. 224.

¹⁸ Hamilton’s Works, vol. vi, p. 201.

¹⁹ Ames’ Works, vol. i, p. 327.

inspired by magistrates of their own choice.”²⁰ This haughty lieutenant of Hamilton’s having narrowly escaped the fury of that same Parisian populace, wished to check the power of the people in his own country by a strong government. He believed that a national law should repeal any state law, and was for a senate for life, appointed by the chief magistrate. The body should consist of men of wealth and of aristocratic spirit—one that would “lord it through pride.”

Theodore Sedgwick, speaker of the House of Representatives, had no faith in the manner of electing the president.²¹ John Jay, Chief Justice of the Supreme Court, doubted whether the people could long govern themselves in an “equal, uniform and orderly manner.”²² Oliver Wolcott, Comptroller of the Treasury, and successor of Hamilton as Secretary, believed that our system of government would fail.²³ Chauncey Goodrich, a leader in politics wrote: “Our greatest danger is from the antagonism of levelism. What folly is it that has set the world agog to be all equal to French barbers?” George Cabot, senator from Massachusetts, held the belief that “Democracy in its natural operation is the government of the worst.”²⁴

Such was the faith, or rather lack of faith, of our federal fathers. Such were the avowed opinions regarding self-government held by those who were administering the government, making its laws, conducting its diplomacy, pronouncing its justice, at the period when Freneau set up his *National Gazette* in Philadelphia. Washington warned the federal leaders against their monarchical notions, reminding them that it was but a step from thinking to speaking and but another to acting.²⁵ And they did

²⁰ Life of Rufus King, vol. i, p. 432.

²¹ Hamilton’s Works, vol. vi, p. 511.

²² Gill’s “Administration of Washington and Adams,” vol. i, p.

390.

²³ Ibid., p. 88.

²⁴ Lodge’s Cabot, p. 341.

²⁵ Sparks’ “Life and Writings of Washington,” vol. ix, p. 187.

act as far as prudence would permit. Hamilton tried to hedge Washington around "with a divinity that did befit a King." Titles and royal trappings were employed to dazzle and awe; measures were introduced into congress under Hamilton's doctrine of "implied powers" that made democrats like Maclay and Madison stand aghast. Hamilton and Hamiltonism ruled not only in the cabinet but in the legislature also. It was charged that the Treasurer in British fashion cracked his whip over congress,²⁶ and "converted the legislature into a committee of sanction," and Washington himself was accused of "treading on the neck of the senate."²⁷

The organ upon which the federalists relied to make public opinion for their cause was John Fenno's "Gazette of the United States." This paper was started in New York but was moved to Philadelphia when the government was transferred to that place.²⁸ Fenno was completely under Hamilton's control and the columns of his Gazette were filled with the monarchical notions of his patron. The following extract, taken from the writings of "Tablet" who contributed, every week, something upon the subject of government, will give an idea of the spirit of Fenno's paper:

"Take away thrones and crowns from among men and there will soon be an end of all dominion and justice. There must be some adventitious properties infused into the government to give it energy and spirit, or the selfish, turbulent passions of men can never be controlled. This has occasioned that artificial splendor and dignity that are to be found in the courts of many nations. The people of the United States may probably be induced to regard

²⁶ Mercer in a speech in congress said: "I have long remarked in this house that the executive, or rather the treasury department, was really the efficient legislature of the country. The House of Representatives is converted into a committee of sanction."

²⁷ Maclay's Journal, p. 131.

²⁸ Hudson's Journalism in America, p. 18.

and obey the laws without requiring the experiment of courts and titled monarchs. In proportion as we become populous and wealthy must the tone of the government be strengthened.”²⁹

Americans were invited to distrust their fitness for sovereignty, “for the experience of past ages proved that whenever the people have exercised in themselves the three powers, the democracy is immediately changed into anarchy. Violent orators agitate the multitude as the winds toss the waves, and the people agitated by demagogues have committed all excesses.” Titles were upheld as the essential features of a vigorous government. The argument for them was simple and cogent. There are differences in men, in talent, in wealth, in position; therefore, there should be titles to designate these differences.

Hamilton, the powerful patron of the *Gazette*, was the theme of its highest panegyric. “He is the highest jewel in Columbia’s crown. As a pillar in the Federal building he seems to unite the solidity of the Doric order, the delicacy and elegance of the Ionic, and the towering beauty of the Corinthian.” In return for this subserviency, Fenno, as we shall presently see, merely demanded cash.

It was to furnish an antidote to the aristocratic and monarchical sentiments of Fenno’s paper that Freneau’s “*National Gazette*” was established, and the better we know the *Gazette* of the United States, the plainer does it become that an antidote was needed. The columns of Fenno’s paper read like those of a journal of the court of St. James. A few paragraphs will illustrate: “The principal ladies of the city have with the earliest attention and respect paid their *devoirs* to the amiable consort of our beloved president, namely, the Lady of his Excellency, the Governor, Lady Stirling, Lady Mary Watts, Lady Kitty Duer, La Marchioness de Breham, the ladies of the Most Honorable Mr. Layton, the Most Honorable Mr. Dalton,

²⁹ *Gazette of the United States*, March, 1790.

the Mayoress, Mrs. Livingston of Clermont, Lady Temple, Madam de la Forest, Mrs. Houston, Mrs. Griffin, the Miss Bayards and a great number of other respectable characters."

Again: "We are informed that the President, His Excellency, the Vice-President, His Excellency, the Governor of this State, and many other personages will be present at the theatre this evening."

Again: "The Most Honorable Morris and Lady attended the theatre last evening."

Such royal gibberish as this could not be reasoned with and Freneau did not attempt to reason with it, but he drove it out of Feno's paper and out of the United States. He caused it to be laughed at, and that it could not endure. A bit of horse-play like the following was far more effective than any amount of abstraction could have been:—The writer, in imagination goes ahead of the time ten years and gives a page of news for the year 1801—

"On Monday last arrived in this city in perfect health, His Most Serene Highness the Protector of the United States, who on Wednesday next will review the regular troops which compose the garrison."

"Yesterday came on before the circuit court of the Protector, the trial of James Barefoot, laborer, for carelessly treading on the great toe of My Lord Ohio. The defendant was found guilty, but as the offense appeared quite accidental, and his lordship had already inflicted on him fifty lashes, the court fined him only 100 pounds and ordered him to be imprisoned six months. Considering the blood and rank of the prosecutor, the humanity of the sentence cannot be too highly extolled. His lordship's toe is in a fair way of recovery, although one of his physicians thinks the nail is in danger."

"Yesterday was capitally convicted by a majority of the jury, John Misprision, for high treason, for lying with the mistress of the Protector's second son, the duke of Erie. Great efforts will be made to obtain a pardon, but it is feared that the enormity of the offense, with a suspicion of its being the third or fourth time he has taken this liberty with his Grace, will prevent their desired effect."

"Sunday last, being the birthday of the Protector's lady, was celebrated in this city with becoming attention. No divine service was performed. The levee of her Highness was remarkably

crowded. She looked uncommonly cheerful considering it is the ninth month of her pregnancy. In the evening the theatre was unusually brilliant in expectation of her Highness's company, who for the reason just mentioned was obliged to forego the pleasure."

"It is said that Lady Champlaine, a maid of honor to her Highness the Protectoress, has had an intrigue with the Duchess of Rye's footman."

"To remedy the inconveniences attending the election on the death of every protector, a bill will be brought in at the next session of Congress to make the office hereditary, and to increase his annual revenue from five hundred thousand to one million of dollars. It is certainly impossible for his Highness to support the dignity of his high station upon his present small allowance."

"The hereditary council will meet in the future at the new palace in Philadelphia. This superb edifice cost the moderate sum of six hundred thousand dollars, ten cents and five mills, which exceeded the calculations of the first lord of the Treasury only by two dollars, three cents and one mill."

"A few copies of the act to restrain the freedom of press may be had at this office."

Monarchy was not the only thing the National Gazette abhorred. Freneau, as a life-long democrat and consistent whig, detested the avowed principles of the federal party and there was no love in his heart for its leader, Alexander Hamilton. Hamilton was therefore singled out and made the principal target for the anti-federal arrows that sped from Freneau's bow. It was upon the appearance of Hamilton's report on manufactures that Freneau's career as a publicist began. The Secretary of the Treasury announced the startling doctrine that it was the unquestionable meaning of the constitution that Congress had power to provide for any object that concerned the general welfare. The phrase "general welfare," he contended, was susceptible neither of specification nor of definition. Every object which in its operations extends throughout the union concerns the general welfare and it was left to the discretion of the National Legislature to decide what shall be regarded as concerning the general welfare. The Secretary entertained no doubts that whatever concerned education, agriculture, manufacturing, or commerce was within the sphere of the action of the National Government.

Freneau, as a champion of strict construction, swooped down upon the doctrine of "implied power" with savage talons. "Is there," the *Gazette* asks, "any object for which money is not necessary, or any object for which money may not be applied and brought under the object of congress? Under such a construction of the power of congress, what is to become of the word constitutional? Nothing henceforth would be unconstitutional. It would be the easiest thing in the world to conceive that religion is a matter of the general welfare; and then an ecclesiastical establishment supported by government would quickly follow. Besides, such a doctrine knocks down every boundary worth contending for between the general government and the state government. This doctrine of non-specification and non-limitation of the power of the constitution was subversive of liberty."³⁰ The Secretary is charged with bad faith in attempting to promulgate such ideas. He is reminded that when he urged the adoption of the constitution, he taught the people that usurpation was not to be apprehended; that construction by implication was impossible, that the states had nothing to fear. Now, by a little refinement in politics, and by the legerdemain of fiscal operations, he was about to do all that he had promised would not and could not be done. The funding scheme, the bank scheme, the excise, were all contrary to himself, the constitution and American freedom.

Hamilton was unfitted by nature to brook opposition, and he met the opposition of Freneau in a most unfortunate manner. At first he left his defense in the hands of his editor Fenno, but Fenno was a heavy fellow and could do little but rave. He hurled invective against any who should dare to criticize a measure of government. The *National Gazette*, he said was the vehicle of party spleen and the opponent of the principles of order, virtue and religion;³¹ its editor was a "wretch," "a spaniel," "a fawn-

³⁰ *National Gazette*, 1792.

³¹ *Gazette of the United States*, Aug. 2, 1792.

ing parasite," "a black-guard," "a grumbletonian," "a crack brain," "a Bedlamite," "a jackal of mobocracy," "a salamander." Freneau reprinted in his own paper these courtly epithets, and kept calm. A few lines of doggerel was all the reply he would vouchsafe to his enraged adversary.

Since the day I attempted to print a gazette
 This Shylock-Ap-Shenkin does nothing but fret; *
 Now preaching and screeching, then nibbling and scribbling
 Remarking and barking and whining and pining
 And still in a pet,
 From morning 'till night with my humble Gazette.

Instead of whole columns our page to abuse,
 Your readers would rather be treated with news;
 While wars are a-brewing, and kingdoms undoing,
 While monarchs are falling, and princesses squalling,
 While France is reforming, and Irishmen storming—
 In a glare of such splendor, what folly to fret
 At so humble a thing as a poet's Gazette.

One Printer for Congress (some think) is enough
 To flatter and lie, to palaver and puff,
 To preach up in favor of monarchs and titles,
 And garters and ribbands to prey on our vitals.

To criticise government and governors seemed to him a perfectly legitimate act and he exercised this right without any great perturbations of conscience. A squib from his paper furnishes the basis of a philosophy for the freedom of press:

"Free government in any country naturally urges by imperceptible advances to tyranny, unless corrected by the vigilance of the people. Nothing but the perpetual jealousy of the governed has ever been found effectual against the machination of ambition. When this jealousy does not exist in some reasonable degree the saddle is soon placed upon the backs of the people and occupied by a succession of tyrants. There never was a government that had not its flatterers whose incense of adulation is always in readiness to be offered at the shrine of power, and whose abilities are prostituted to cover the abuse of office. Monarchies it is well known owe no small share of their disability to such support. Republics ought to be above it." ²²

²² National Gazette, 1791.

But it must not be inferred that Freneau abused the liberty of the press. The National Gazette was not a scurilous or libellous sheet. It has an unsavory reputation in history, but we shall see before we have finished, that it does not deserve such a reputation, that scurrility and slander are not a feature of its pages. It was called atheistical and subversive of religion and morals, not because it denied the existence of God or attacked religion, for it let such subjects severely alone, but because it advocated democratic principles. In those days if a man was a democrat he was an atheist, and that was all there was to it. Compared with the Daily Advertiser, a republican contemporary, or with Feno's paper, the National Gazette was a mild and decent sheet. The fear and hatred that it won for itself arose from the ability with which it was edited. It was supported by the best talent of the age. Hugh Brackenridge, Freneau's classmate at college, now eminent as a jurist, sympathized with the aims of the paper and contributed largely to its success by writing for its columns.³³ James Madison worked for it, talked for it, and wrote for it.³⁴ Jefferson could not have been more interested in it if his political life had depended upon its success. He was always writing about it to his friends, calling attention to its merits, and drumming up subscribers and subscriptions. He kept Freneau supplied with foreign newspapers, and thus enabled him to make his paper the source of the fullest information respecting the mighty movements and triumphs of democracy in Europe. By good management on the part of the

³³ Brackenridge, Francis Hopkinson, and Freneau are admitted by critics to be the three greatest American prose writers of the eighteenth century. Freneau's prose writing is characterized by Moses Coit Tyler as "delightful, easy, sinewy, touched with a delicate humor, crisp and keen edged." *Lit. Hist. American Revolution*, vol. ii, 275.

³⁴ "I used occasionally to throw in an article with a view chiefly to contrast the monarchical spirit which characterized Feno's paper." *Randall's "Thomas Jefferson,"* vol. ii, p. 74.

editor and his friends, the paper prospered and became the power it was sought to make it. In May, 1792, Freneau published the following card in his paper: "Upward of six months being elapsed since the publication of this paper, and the subscriptions having succeeded beyond the editor's most sanguine expectations, he now begs leave to solicit the attention of the people of the United States to a publication which he trusts will at all times be found truly republican in its principles and tendency."

The chief business of the *Gazette* was to destroy Hamilton, the one man in whom the hopes of the federalists lay. That the Secretary of the Treasury was the head and front of the federal party was clearly recognized by Jefferson. "Hamilton is really a colossus to the anti-republicans," he writes to Madison. "Without numbers he is a host within himself. When he comes forward there is nobody but yourself who can meet him. For God's sake take up your pen and give him a fundamental reply."³⁵ Freneau, after the manner of editors generally, did not concern himself deeply about "fundamental replies." His plan was to render Hamilton and his schemes odious and unpopular. Every utterance, every report, every recommendation of the Secretary was construed as having but one ultimate aim—the overthrow of the constitution and the establishment of a monarchy. His funding system, his national bank, his excise law, his love of titles, his advocacy of a perpetual public debt, his loose-construction notions, were all of the same cloth. If you want rules for the conversion of a limited republic into an absolute monarchy, said Freneau, here they are:

1. Get rid of constitutional shackles.
2. Confer titles of rank. If the principal magistrate should be particularly venerable in the eyes of the people take advantage of that fortunate circumstance.
3. If the principal magistrate is averse to titles, persevere in indoctrinating the people with the idea. Time will gain it respect.

³⁵ Jefferson's Works, vol. iv, p. 122.

4. Harp incessantly upon the dangers of the mob.
5. Let the great nostrum be a perpetual public debt. If a debt is not at hand *assume* one, and then swell it and stretch it in every possible way.
6. Interest the legislators in speculation and speculators in legislation.
7. Establish an incorporated bank by which those who are to inherit the kingdom that is preparing for them may be enriched.
8. Arrogate all power to the general government under the phrase "general welfare."
9. Secure a rich manufacturing class by making laws in their interests.
10. Create a standing army.
11. Take England as a model.

Hamilton's doctrine that a public debt is a public blessing was resisted by the National Gazette with bull-dog ferocity. "Brutus," who fulminated for months against the funding system ably supported these charges:

1. The funding system threw \$50,000,000 into the hands of the wealthy.
2. It combined the money interest with the monopoly of the National Bank.
3. By its excise and impost offsprings it swallowed up by future payments the last resource of the country.
4. The certificates of indebtedness fell into the hands of speculators and foreigners.
5. It had diverted capital from its proper channels and turned it into speculation.
6. It created an immense body of revenue officials from the Secretary down to the tide-waiter, all bound together by common interests.

The editor's compassion was deeply moved for the soldier of the revolution who had been paid by certificates of indebtedness which had passed out of his hands at a discount into the hands of speculators, and which by Hamilton's law, had appreciated to several times their value. The theme caused the editor to drop into rhyme:

Public debts are public curses
In *soldiers'* hands; there nothing worse is!
In speculators' hands increasing,
A public debt's a public blessing.

Jonathan Pindar, who is Philip Freneau³⁶ in disguise, appears before Hamilton and other magnates as candidate for the position of poet-laureate. To further his chances of appointment he promised to swear—

The nation's debt's a blessing vast,
Which far and wide its general influence sheds,
From whence Pactolian streams descend so fast,
On their—id est—the speculators' heads.

That to increase this blessing and entail
To future time its influence benign,
New loans from foreign nations cannot fail
While standing armies clinch the grand design.

That taxes are no burthen to the rich,
That they alone to labor drive the poor—
The lazy rogues would neither plow nor ditch,
Unless to keep the sheriff from the door.

Freneau was a master of irony and frequently subjected Hamilton's sensitive nerves to this species of wit. The following piece is a sample of the fine satire that was constantly directed against the federalists and their chief:

A NEW POLITICAL CREED.

“Whoever would live peaceably in Philadelphia, above all things it is necessary that he hold the federal faith and the federal faith is this, that there are two governing powers in this country, both equal and yet one superior; which faith unless one keep undefiledly without doubt he shall be abused everlasting. The Briton is superior to the American and the American is superior to the Briton, and yet they are equal and the Briton shall govern the American.

“The Briton while here is commanded to obey the American and yet the American ought to obey the Briton; and yet they ought not both to be obedient. For there is one dominion nominal of the American and another dominion real of the Briton. And yet there are not two dominions but only one dominion.

“The American was created for the Briton and the Briton for the American, and yet the American shall be a slave to the Briton and the Briton the tyrant of the American.

³⁶ Jefferson says these “Probationary leaders,” as they were called, were written by St. George Tucker and not by Freneau. They were, at any rate, saddled on the editor. Ford's Writings of Thomas Jefferson, vol. vi, p. 328.

"The Britons are of three denominations, and yet only of one soul, nature, and subsistence: The Irishman of infinite impudence; the Scotchman of cunning most inscrutable; and the Englishman of impertinence altogether insupportable.

"For the true faith is that we believe and confess that the government is fallible, and infallible: Fallible in its republican nature; and infallible in its monarchical tendency; erring in its state individuality and unerring in its federal complexity. So that it is both fallible and infallible; yet it is not twain but one government only, as having consolidated all state dominion in order to rule with sway uncontrolled. This is the true federal faith, which except a man believe and practice faithfully, beyond all doubt he shall be cursed perpetually."

Such reading was exceedingly painful to a proud and highly organized nature like Hamilton's. Fenno defended the Secretary as best he could, but Fenno was no match for Freneau. The *National Gazette* continued to pour forth its effective broadsides until Hamilton's patience gave way and he determined to break a lance in his own behalf. Freneau he affected to despise. In the editor and clerk who met his eyes daily in the office of government he saw only the servile instrument of Thomas Jefferson. Without evidence and without reason he cherished the notion that the *National Gazette* had been established by the Secretary of State, and that it was supported and directed by him, and that Freneau was a man of straw. With vision blurred and his facts all tangled, Hamilton rushed into print with an attack upon Jefferson. The chastisement, of course, had to be administered over Freneau's shoulders. In July, 1792, there appeared in Fenno's *Gazette* the following communication:

Mr. Fenno:

The editor of the *National Gazette* receives a salary from the government. *Quaere:* Whether this salary is paid for translations or for publications the design of which is to villify those to whom the voice of the people has committed the administration of our public affairs,—to oppose the measures of government and by false insinuation to disturb the public peace?

In common life it is thought ungrateful for a man to bite the hand that puts bread in his mouth, but if the man is hired to do it, the case is altered.

T. L.

"T. L." was Alexander Hamilton. Freneau paid but little attention to the squib, doubtless because he did not suspect its high authority. He re-printed it in his paper and said it was beneath notice, and propounded this query by way of retort: "Whether a man who receives a small stipend for services rendered as French Translator to the Department of State and as editor of a free newspaper admits into his publication impartial strictures on the proceedings of the government, is not more likely to act an honest and disinterested part toward the public than a vile sycophant who, obtaining emoluments from the government far more lucrative than the salary alluded to, finds his interest in attempting to poison the mind of the people by propagating and disseminating principles and sentiments utterly subversive of the true interests of the country and by flattering and recommending every and any measure of government, however pernicious and destructive its tendency might be to the great body of the people?" The world is then called upon to judge between the motives of Freneau and those of Fenno.³⁷

The world probably took very little interest in the motives of either of the editors, yet it did take the greatest interest in the names that were soon involved in the controversy that ensued. A struggle between Hamilton and Jefferson was fraught with issues of the most profound significance. The triumph of Hamilton meant conservatism and the rule of the classes in America; the triumph of Jefferson meant radicalism and the rule of the masses. To be precise and just, we may say that Hamiltonism meant a strong central government administered in the English spirit, while Jeffersonism meant a light and easy central government that would respond readily to the will of the populace. Both Jefferson and Hamilton honestly wished to avoid a quarrel, yet a conflict between them was inevitable. Hamilton by a few inopportune strokes of the

³⁷ National Gazette, July, 1792.

pen in a moment of irritation precipitated the contest. In reply to Freneau's retort he wrote for Fenno's paper, over the signature "An American," a letter that made peace no longer possible.

"Mr. Freneau," he said in this letter—thinking and caring nothing about Freneau—"Mr. Freneau should not escape with the plea that his hostility toward the measures of government was only a mark of independence and disinterestedness." The whole truth in regard to the *National Gazette* should be known. That truth for the enlightenment of the world and the discomfiture of Jefferson is then set forth in these paragraphs:

"Mr. Freneau, before he came to Philadelphia, was employed by Childs and Swaine, printers of the *Daily Advertiser*, in New York, in the capacity of editor or superintendent. A paper more devoted to the views of a certain party, of which Mr. Jefferson is the head than any to be found in this city was wanted. Mr. Freneau was thought a fit instrument; a negotiation was opened with him which ended in the establishment of the *National Gazette* under his direction.

"Mr. Freneau came here at once editor of the *National Gazette* and clerk for foreign languages in the department of Mr. Jefferson, Secretary of State; an experiment somewhat new in the history of political manœuvres in this country; a *newspaper instituted by a public officer* and the editor of it regularly pensioned with the public money in the disposal of that officer, an example which could not have been set by the head of any other department without having long since been rung through the United States. [By the *National Gazette*, of course.]

"Mr. Freneau is not, then, as he would have it supposed, the independent editor of a newspaper who though receiving a salary from the government has firmness enough to express its maladministration; he is the faithful and devoted servant of the head of a party from whose hands he receives the boon. The whole complexion of

this paper exhibits a decisive internal evidence of the influence of that patronage under which he acts. Whether the services rendered are equivalent to the compensation he receives is best known to his employer and himself; there is, however, some room for doubt. It is well known that his employer is himself well acquainted with the French language, the only one of which Mr. Freneau is the translator and it may be a question how often his aid is necessary.

“It is somewhat singular too, that a man acquainted with but one language, engaged in an occupation which it may be presumed demands his whole attention—the editor of a newspaper—should be the person selected as the clerk for foreign languages in the department of the United States for foreign affairs. Could no person be found acquainted with more than one foreign language? and who in so confidential a trust could have been regularly attached to, in the constant employ of the department and immediately under the eye of the head of it?”³⁸

Hamilton then turns from Freneau to Jefferson and hauls that gentleman over the coals for divers political iniquities. At the time of Hamilton’s attacks, Jefferson was in Virginia designing geometrical wheelbarrows and mould-boards of least resistance. He does not seem to have entered into the *mêlée* but was content to let Freneau and Hamilton fight it out for themselves. Many writers rushed to his defense, but his own hand was stayed, and the hand of Freneau even is not apparent in the replies to Hamilton’s attack. Moreover the champions of Jefferson had their articles printed not in the *National Gazette* but in the *Daily Advertiser* of Philadelphia.

If the reader has recalled the facts connected with Freneau’s coming to Philadelphia he will have seen that Hamilton’s charges were nothing more than assumptions. These charges Freneau met in a characteristic way. He

³⁸ *Gazette of the United States*, Aug., 1792.

went before the Mayor of Philadelphia and duly swore: "That no negotiation was ever opened with him by Thomas Jefferson, Secretary of State for the establishment or institution of the National Gazette; that the deponent's coming to the city of Philadelphia as a publisher of a newspaper was at no time urged, advised or influenced by the above officer, but that it was his own voluntary act; that the Gazette or the Editor thereof was never directed, controlled or attempted to be influenced in any manner either by the Secretary or any of his friends; that not a line was ever directly or indirectly written, dictated or composed for it by that officer, but that the editor had consulted his own judgment alone in the conducting of it—*free, unfettered and uninfluenced.*"³⁹

This solemn and explicit denial by a man whose character was above reproach would have caused a less pertinacious and a more sagacious man than Hamilton to let the matter drop. But his feelings now had the whip hand of his judgment and he could not stop. He rushed further into the blind encounter. He now came forward with the insinuation that Freneau had sworn to a lie. This he said, would be just what a pensioned tool would do. How, he would like to know, was Mr. Freneau able to swear that Mr. Jefferson never wrote a line for his paper. No editor who does not himself write every line for his paper can make any such affirmation as that. Facts were against Mr. Freneau. He then opens his artillery of facts:

"It is a fact, Mr. Freneau, that you receive a salary as clerk for foreign languages, and yet you can translate but one language."

"It is a fact that you left New York to become the editor of the *National Gazette.*"

"It is a fact that your appointment was antecedent to the commencement of your paper."⁴⁰

"It is a fact that Mr. Jefferson was in the beginning opposed to the constitution."

³⁹ *Gazette of the United States*, Aug., 1792.

⁴⁰ Freneau's appointment was made Aug. 3, 1791. The first number of the *Gazette* appeared Oct. 31, 1791.

"It is a fact that that officer arraigns the principal measures of government."

"From these facts the inferences which are to be drawn are irresistible. If you had previously been the conductor of a newspaper in this city—if your appointment had been any considerable time subsequent to the institution of your paper, there might have been some room for subterfuge. But as matters stand you have no possible escape."

"It makes no difference, Mr. Freneau, whether there was a preliminary negotiation or not; there are many facts to presuppose that such a negotiation did occur, and these facts will be brought out, sir, if scruples of family connection or the dread of party resentment do not forbid. And the evidence adduced will be uncontested. Any honest man must conclude that the relations that subsist between you and Mr. Jefferson are indelicate, unfit, and suspicious. Your apology that the meagre compensation provided renders it necessary for the translator to engage in some other occupation is inadmissible, for a competent clerk could have been employed at a full salary, and if his work as a translator did not occupy all this time, he could have used his surplus time at some other kind of work in the department. If there had been difficulty in finding such a man, undoubtedly, you, the editor of a newspaper should not have been selected, and the fact that you were selected is a proof of sinister design. The fact that your predecessor, Mr. Pintard, received but two hundred and fifty dollars a year and was a newspaper man is not to the point; the employment of that gentleman was a natural consequence of a particular situation. These strictures involve you, Mr. Freneau, but it is confessed that they are aimed at a character of greater importance in the community."⁴¹

Nothing could be more flimsy and illogical than the above, and it is strange that an intellect like Hamilton's should have expressed itself in such a way. It was due doubtless to the fact that he had begun the controversy in a mental fog and could not find his way out. He had got the cart before the horse. On Aug. 11, 1792, he made the charge that Madison had conducted an unworthy negotiation with Freneau, and two days after wrote to Elias Boudinot for an authentication of the charge. "If I recollect right," Hamilton says to Boudinot, "you told me, that this, if necessary, could be done; and if practicable it is of

⁴¹ *Gazette of the United States*, Aug., 1792; Hamilton's Works, vol. v, p. 518.

real importance that it should be done. It will confound and put down a man who is continually machinating against public happiness." (Not Freneau but Jefferson is meant.)

" You will oblige me in the most particular manner by obtaining and forwarding to me without delay the particulars of all the steps taken by Mr. Madison—the when and the where—with the liberty to use the name of the informant. His *affidavit* to the facts, if obtainable would be of infinite value."

But behold! "the when and the where" and the "affidavit of infinite value," to meet Freneau's affidavit did not materialize. Boudinot informs him that there is no direct evidence of a negotiation available; that the gentleman upon whom he relied for information was more attached to Freneau than he had supposed and would say nothing; that there was nothing but hearsay upon which to base the charge, although he (Boudinot) would do all he could to get together some evidence.⁴² Hamilton also wrote to Jonathan Dayton for "the when and the where" of the alleged negotiation, but that gentleman, although desirous of frustrating the designs of a particular party, could not comply with his request.

Freneau called for the proof that was promised, declining to answer charges of a personal nature unless they were supported by the declarations of persons. But proof there was none, and Hamilton was driven to the miserable confession "that the secret intentions of men being in the repositories of their own breasts it rarely happens and is therefore not to be expected that direct and positive proof of them can be adduced. *Presumptive facts and circumstances* must afford the evidence."⁴³

After this graceless acknowledgment that his charges against Freneau were without proof, Hamilton spared the

⁴² Hamilton's Works, vol. v, p. 520.

⁴³ Parton's Life of Jefferson, p. 447.

editor and applied his bad names to Jefferson direct. The bringing of Freneau into this quarrel was most unfortunate to Hamilton's cause and reputation. He stood before the country convicted of an unwarranted attempt to injure an innocent private citizen in order that he might punish a political enemy. And the country did not forgive him. "He lost something," says Parton, "which is of no value to an anonymous writer in a presidential campaign, but is of immense value to a public man—WEIGHT." His query in Fenno's paper calling in question Freneau's honor was the beginning of his political downfall. Besides, viewed from the standpoint of private morality, Hamilton's attack upon Freneau was very low, for he was himself doing precisely what he accused Jefferson of doing. He was supporting a partisan paper by means of the patronage of his department. Freneau did not fail to bring out the fact that Fenno was exclusive printer to the treasury department, and that his emoluments in that direction were twenty-five hundred dollars per annum.⁴⁴ And candid history brings out another fact still more damaging, to wit, that Fenno was at times the direct beneficiary of Hamilton's private purse. Not long after the attack upon the editor of the National Gazette, Fenno wrote to Hamilton stating that he was in financial straits and that if the hand of benevolence and patriotism were not speedily extended to him his career as a printer would be over.⁴⁵ Hamilton upon the receipt of the letter wrote to his friend Rufus King as follows:

"My Dear Sir:

"Inclosed is a letter just received from poor Fenno. It speaks for itself.

"If you can without delay raise 1000 dollars in New York, I will endeavor to raise another thousand at Phila-

⁴⁴ National Gazette, Sept., 1793.

⁴⁵ Life of Rufus King, vol. x, p. 502.

adelphia. If this cannot be done we must lose his services and he will be the victim of his honest public spirit.

“Yours truly,

“A. HAMILTON.”

“Poor Fenno” continued to publish his *Gazette*, hence it is tolerably certain that the “hand of benevolence and patriotism” was in some way extended.

Either a consciousness of his innocence or his stubborn nature prevented Freneau from offering an elaborate defense against Hamilton’s charges. His biographer therefore is not called upon to dwell long upon his exculpation. As we have seen, Jefferson kept out of the quarrel. His name as far as possible was kept out of the *National Gazette*. He was attacked in Fenno’s paper and defended in the *Daily American Advertiser*, a paper which was as violent in its republicanism as Freneau’s paper. In one of the articles in the *Advertiser* in behalf of Jefferson is the following incidental defense of Freneau:

“Mr. Freneau has the following well-authenticated claim for the office of Translator. A native of the Middle States, he had been liberally educated at Princeton. To an accurate knowledge and a refined taste in the English language, he had added a similar acquirement in the French, the nation with whom we have the most intimate relations and whose language has become in a great measure throughout Europe the general medium of political negotiation. Through life his morals were without blemish and his conduct in the revolution was that of a sound whig and republican. Perhaps his sufferings as a prisoner of war may have excited additional sympathy in his favor. [In the matter of getting an appointment.] To what trait in his character, to what defect in his qualification does “American” [Hamilton] object? To his occupation? and if so, to occupations in general or to printing in particular? The low rate of pay made it necessary to get one engaged in some other business. Is printing less honorable, less beneficial to mankind than all others? Does “American” come forward to traduce it and lessen it? Vain and unworthy effort! Whether he had already set up a press or was about to set up one, —for “American” can have it either way—is a matter of indifference. He could not take the clerkship without the aid of the press. The objection in the point of influence, if the characters in question were capable of it, is scarcely worthy of notice. The office was created by law and a salary attached to it. If the person appointed

performs these duties, what other claim can the principal have upon him? Degraded indeed would be the condition of a free-man, if an appointment to an office carried with it low subservience to the Superior. It is treasonable to infer that any such subservience exists between a superior and his subordinate and a great injustice has been done both Jefferson and Freneau by 'American.'"⁴⁶

We cannot let the Hamilton-Freneau-Jefferson quarrel drop without giving Jefferson's version of the affair. Washington had called his two secretaries to task for their bickerings and implored them in the name of the country to cease from their strife. Jefferson answered at considerable length the charge that he had set up the National Gazette and that Freneau was his hireling:

"While the government was at New York I was applied to on behalf of Freneau to know if there was any place within my department to which he could be appointed. I answered there were but four clerkships, all of which I found full and continued without any change. When we removed to Philadelphia, Mr. Pintard, the translating clerk, did not choose to remove with us. His office then became vacant. I was again applied to there for Freneau and had no hesitation to promise the clerkship to him. I cannot recollect whether it was at the same time or afterwards, that I was told he had a thought of setting up a paper there.⁴⁷ But whether then or afterwards, I considered it a circumstance of some value, as it might enable me to do what I had long wished to have done, that is to have the material parts of the Leyden Gazette brought under your eye, and that of the public, in order to possess yourself and them of a juster view of the affairs of Europe, than could be obtained from any other public source. This I had ineffectually attempted through the press of Mr. Fenno, while in New York, selecting and translating passages myself at first, then having it done by Mr. Pintard, the translating clerk, but they found their way too slowly into Fenno's paper. Mr. Bache essayed it for me in Philadelphia, but his being a daily paper did not circulate sufficiently in other states. He even tried, at my request, the plan of a weekly paper of recapitulation from his daily paper, on hopes it might go into the other States, but in this, too, we failed. Freneau as translating clerk and the

⁴⁶ American Daily Advertiser, Oct., 1792.

⁴⁷ We cannot gather from the correspondence whether it was before or afterwards. The offer was made Feb. 28, 1791. A letter from Madison, May, 1791, reads as if Jefferson was aware of Freneau's intention.

printer of a periodical paper likely to circulate through the states (uniting in one person the parts of Pintard and Fenno) revived my hopes that they could at length be effected. On the establishment of his paper, therefore, I furnished him with the Leyden Gazettes with an expression of my wish that he could always translate and publish the material intelligence they contained, and have continued to furnish them from time to time as regularly as I have received them. *But as to any other direction or any indication of my wish how his press should be conducted, what sort of intelligence he should give, what essays encourage, I can protest in the presence of Heaven that I never did by myself or any other, or indirectly say a syllable nor attempt any kind of influence. I can further protest in the same awful presence, that I never did by myself or any other, directly or indirectly write, dictate, or procure any one sentence or sentiment to be inserted in his or any other gazette, to which my name was not affixed or that of my office.* I surely need not except here a thing so foreign to the present subject as a little paragraph about our Algerian captives, which I once put into Freneau's paper.

"Freneau's proposition to publish a paper having been about the time that the writings of Publicola and the discourses of Davilla had a good deal excited the public attention, I took for granted from Freneau's character, which had been marked as that of a good whig, that he would give free place to pieces written against the aristocratical and monarchical principles these papers had inculcated. This having been in my mind, it is likely enough I may have expressed it in conversation with others, though I do not recollect that I did. To Freneau I think I could not, because I still had seen him but once and that was at a public table, at breakfast at Mrs. Elsworth's, as I passed through New York the last year. And I can safely declare that my expectations looked only to the chastisement of the aristocratical and monarchical writings, and not to any criticism on the proceedings of government. Colonel Hamilton can see no motive for any appointment but that of making a convenient partizan. But you, sir, who have received from me recommendations of a Rittenhouse, Barlow, Paine, will believe that talents and science are sufficient motives with me in appointments to which they are fitted, and that Freneau as a man of genius, might find a preference in my eye to be a translating clerk and make a good title to the little aids I could give him as the editor of a Gazette by procuring subscriptions to his paper as I did some before it appeared, and as I have done with pleasure for other men of genius. Col. Hamilton, alias 'Plain Facts,' says that Freneau's salary began before he resided in Philadelphia. I do not know what quibble he may have in reserve on the word 'residence.' He may mean to include under that idea the removal of his family; for I believe he removed himself before his family did to Philadelphia. But no act of mine gave commencement to his salary before he so far took up his

abode in Philadelphia as to be sufficiently in readiness for his duties of his place. As to the merits or demerits of his paper they certainly concern me not. He and Fenko are rivals for the public favor. The one courts them by flattery, the other by censure, and I believe it will be admitted that the one has been as servile as the other severe. No government ought to be without censors; and where the press is free, no one ever will." ⁴⁸

This solemn and semi-official history of the establishment of the National Gazette agrees perfectly with the facts as they have hitherto been related in these pages. It agrees with the account given by James Madison,⁴⁹ with the sworn statement of Freneau, and it must stand as true history until evidence is produced to shake it. Freneau was the independent editor of an independent paper.

The charge of perjury with which Hamilton tried to blacken Freneau's character, aroused the resentment of the poet and excited the editor to the fullest exercise of his license.⁵⁰ If the federalists had heretofore been scourged with whips, they were now scourged with scorpions. Every phase of their policy was assailed in the National Gazette most bitterly, most fearlessly, and with a persistence that was as relentless as fate. The senate held its sessions with closed doors. The Gazette attacked these doors with a crow-bar. Appealing to Hamilton's "great beast"—the people—it says:

A motion for opening the doors of the senate chamber has again been lost by a considerable majority—in defiance of instruction, in defiance of your opinion, in defiance of every principle

⁴⁸ Writings of Jefferson, vol. vi, pp. 106-108.

⁴⁹ Writings of Madison, vol. i, pp. 569-570.

⁵⁰ Fenko continued to cast discredit upon Freneau's oath. "Enquirer" wanted to know if Freneau took the oath reverently, if he kissed the holy evangel in a pious manner. The correspondent suspects that instead of kissing the Bible he saluted with reverence a copy of Jefferson's "Notes on Virginia." A doubting rhymester thus delivered himself:

To many a line in humble prose
Thy voice is wont to swear,
And once to shame thy patron's foes
Didst lie before the mayor.

Gazette of the United States, Aug., 1792.

which gives security to free men. What means this conduct? Which expression does it carry strongest with it, contempt for you or tyranny? Are you freemen who ought to know the individual conduct of your legislators, or are you an inferior order of beings incapable of comprehending the sublimity of senatorial functions, and unworthy to be entrusted with their opinions? How are you to know the just from the unjust steward when they are covered with the mantle of concealment? Can there be any question of legislative import which freemen should not be acquainted with? What are you to expect when stewards of your household refuse to give account of their stewardship? Secrecy is necessary to design and a masque to treachery; honesty shrinks not from the public eye."

"The Peers of America disdain to be seen by vulgar eyes, the music of their voices is harmony only for themselves and must not vibrate in the ravished ear of an ungrateful and unworthy multitude. Is there any congeniality excepting in the administration, between the government of Great Britain and the government of the United States? The Senate supposes there is, and usurps the secret privileges of the House of Lords. Remember, my fellow citizens, that you are still freemen; let it be impressed upon your minds that you depend not upon your representatives but that they depend upon you, and let this truth be ever present to you, that secrecy in your representatives is a worm which will prey and fatten upon the vitals of your liberty."⁵¹

Freneau could be trusted to keep the "truth ever present" before the mind of the public, and after little more than a year of agitation the doors of the senate were opened to the public and secrecy no longer preyed upon the vitals of liberty. His hostility to Hamilton's National Bank scheme was equally pronounced. To a "Truly Great Man" (Washington) he addresses these lines:

George, on thy virtues often have I dwelt,
And still the theme is grateful to mine ear,
Thy gold let chemists ten times even melt
From dross and base alloy they'll find it clear.

Yet thou'rt a man—although perhaps, the first,
But man at best is but a being frail;
And since with error human nature's curst,
I marvel not that thou shouldst sometimes fail.

That thou hast long and nobly served the state
The nation owns, and freely gives thee thanks,
But, sir, whatever speculators prate,
She gave thee not the power to establish BANKS.

⁵¹ National Gazette, Feb., 1792.

Probably to no other influence was the final downfall of the National Bank more directly traceable than to the hatred for it which was inspired in the minds of the people by the National Gazette. Freneau was now the leading editor in America. He was the oracle for all editors of humble democratic sheets. In the south, where there were but few newspapers, it was the only paper that had a general circulation.⁵² The leaders of the republican party left no stone unturned to get it among the people, and the fifteen hundred copies of its circulation were sent where they would do the most good. In the small papers of the country extracts from it were published as coming from a sacred source. Examine a democratic paper of the time and the chances are that you will find in it a clipping from the National Gazette and when the extract is found, the chances are still great that it is an attack upon the National Bank.⁵³ Public opinion was in a formative state when Freneau attacked the bank scheme, and the seeds of enmity to it which he sowed fructified in its destruction.

The strength of the paper, however, is to be found in its democracy and in its perpetual harping upon the theme of federal enmity to republican government and federalist love of monarchy. There may have been no intention in the minds of the federal leaders to abandon republican forms of government as soon as expedient, yet Freneau believed there was and made the people believe there was; and that was all that was necessary for the success of democracy.

Jefferson, as we shall see, could not be induced even by Washington to forsake Freneau, and we are not surprised at his loyalty, for Freneau was a thorough Jeffersonian, and in the Gazette Jefferson's opinions were reflected as in

⁵² In Virginia, in 1791, there were nine newspapers; in South Carolina, three; in North Carolina, two; and in Georgia, two. National Gazette, Nov., 1791.

⁵³ One of the charges against the Gazette was that it was circulated in every state. National Gazette, March 27, 1792.

a mirror. We can imagine the pleasure of the great democrat in the little sentiments from Paine and Rousseau which sparkled in the columns of the *Gazette*; or this morsel of an epitaph for the tomb of Frederick the Great:

Here lies a king, his mortal journey done,
Through life a tyrant to his fellow-man;
Who bloody wreaths in bloody battles won—
Nature's worst savage since the world began.⁵⁴

In January, 1793, "Louis Capet lost his caput"—as the irreverent *Boston Argus* put it—and France was declared a republic. In May of the same year, citizen Genet, the ambassador of the new republic after an almost triumphal journey northward from Charleston, arrived in the city of Philadelphia amid the roar of cannon and the acclamations of a noisy populace. War had just been declared by France against England and the ebullient minister was sent by his government to awaken the sympathy and secure the aid of America in behalf of France. His mission began with the brightest prospect of success. Farmers and merchants offered him provisions at a lower price than they would sell them to the agent of any other nation. Six hundred thousand barrels of flour were at his disposal.⁵⁵ When he passed through a city, enthusiastic lovers of France crowded the avenues shouting for the liberty of the nation that had helped America to secure her own freedom. At Philadelphia three thousand went out to Dobb's Ferry to meet the representative of the sister republic; while a counter demonstration, gotten up by the lovers of England, numbered barely three hundred. Genet was banqueted on every possible occasion and toasted sometimes when a toast to Washington was forgotten. Men put on the tri-colored cockade, joined Jacobin clubs, and restricted the form of salutation to "citizen."

Citizen Freneau was with the French heart and soul. The French cause was dear to him for sentimental reasons

⁵⁴ Freneau's Poems.

⁵⁵ *National Gazette*, May, 1793.

as well as for political, for, as De Lancey says, "although he belonged to the third generation of his family in America, he was as thorough a Frenchman as if he had been born under the sunny skies of Provence or had drawn his first breath amid the Bordelais or beneath the lofty tower of an ancient chateau of historic Normandy."⁵⁶ With the warmth of a Frenchman and the boldness of an American he threw the influence of his paper upon the side of the French party. The interests of America became in his mind identical with the interests of France. He believed with John Dickinson that if "France did not succeed in her contest every elective republic upon earth would be annihilated and that the American republic would be crushed at once." As between France and England it was impossible for Freneau's fervid and positive mind to profess neutrality. "When of two nations the one has engaged herself in a ruinous war for us, has spent her blood and money for us, has opened her bosom to us in peace and has received us on a footing almost with her own citizens, while the other has moved heaven and earth and hell to exterminate us in war, has insulted us in all her councils, in peace shut her doors to us in every port where her interest would admit it, libelled us in foreign nations, endeavored to poison them against the reception of our most precious commodities: to place these two nations on an equal footing is to give a great deal more to one than to the other, if the maxim be true that to make unequal quantities equal you must add more to one than to the other. To say in excuse, that gratitude is never to enter into the notions of national conduct is to revive a principle which has been buried for centuries, with its kindred principles of the lawfulness of assassination, perjury and poison."⁵⁷ That is the way the matter appeared to Jefferson; Freneau's feelings upon the subject were still stronger.

⁵⁶ Edward F. De Lancey in *Proceedings of the Huguenot Soc.*

⁵⁷ *Jefferson's Works*, vol. iii, p. 98.

But the president decided that it was no time for gratitude and declared by proclamation that the United States should pursue an impartial course and should grant nothing to France that was not granted to England also. A storm of disapproval burst upon the president's head when this proclamation was published. Of all the voices that were lifted up against his policy, none was louder and none was more distinctly heard by the president or gave him more discomfiture than the voice of Freneau. "Sir," said the editor to the president, "Sir, let not, I beseech you, the opiate of sycophancy, administered by interested and designing men, lull you into a fatal lethargy at this awful moment. Consider that a first magistrate in every country is no other than a public servant whose conduct is to be governed by the will of the people."⁵⁸

When Genet had brought upon himself the united opposition of the administration and had alienated many of his supporters by his high-handed actions and by his boast that he would appeal from the president to the people, Freneau stood by him and supported him to the last. "Why all this outcry," he said, "against Mr. Genet, for saying he would appeal to the people? Is the president a consecrated character that an appeal from him must be considered criminal? What is the legislature of the union but the people in congress assembled? And is it an affront to appeal to them? The minister of France, I hope will act with firmness and with spirit. The people are his friends, or rather the friends of France, and he will have nothing to apprehend, for as yet the people are sovereign in the United States. Too much complacency is an injury done his cause, for as every advantage is already taken of France (not by the people) further condescension may lead to further abuse. If one of the leading features of our government is pusillanimity, when the British lion shows his teeth, let France and her minister act as becomes

⁵⁸ National Gazette, June, 1793.

the dignity and justice of their cause and the honor and faith of nations.”⁵⁹

This was strong language and it affected Washington powerfully. Before this French interference he had never been crossed in his policy, and criticism went hard with him. “By God,” he said in one of those passions that sometimes took possession of him, “By God that he had rather be in his grave than in his present situation. That he had rather be on his farm than to be made emperor of the world; that that rascal Freneau, sent him three copies of his paper every day, as if he thought he would become the distributor of his paper; that he could see nothing in this but an impudent design to insult him.”⁶⁰

Washington was so sensitive and fretful upon the subject of Freneau that he intimated to Jefferson that it would be agreeable to him if the secretary would withdraw Freneau’s appointment as translating clerk. “But I will not do it,” said Jefferson. “His paper has saved our constitution *which was galloping fast into monarchy*, and has been checked by no one means so powerfully as by that paper. It is well and universally known that it has been that paper which has checked the career of the monocrats and the president has not with his usual good sense looked upon the efforts and effects of that free press and seen that though some bad things have passed through it to the public, yet the good have preponderated immensely.”

Jefferson could have discharged Freneau but he could not have silenced him. The sturdy editor had taken up the French cause for its own sake and without regard to consequences. His perfect independence in the management of his paper is attested to indirectly by Jefferson in a letter written to Madison after Genet had been abandoned by the more discreet republicans. Speaking of Genet, Jefferson says in this letter: “He has still some defend-

⁵⁹ National Gazette, July, 1793.

⁶⁰ Jefferson’s Works, vol. i, p. 231.

ers in Freneau's and Greenleaf's papers. Who they are I do not know."⁶¹ This was written after Jefferson had abandoned Genet. Does the language imply subserviency upon the part of Freneau? If the *National Gazette* had been under the control of Jefferson would it have continued to support a cause after its master had withdrawn his support from the cause?

Besides being its greatest literary champion, Freneau was in other ways a conspicuous figure among the promoters of the French cause. His editorial office was a rendezvous for French sympathizers; he solicited and collected funds to be sent to France, acting as agent for the "French Society of Patriots of America."⁶² At the notable civic feast given in Philadelphia in honor of Genet an ode in French was read, and Citizen Freneau was requested to translate it into English. This the poet did in an uncommonly careless and unhappy fashion.

Historians have the habit of abusing Freneau for the part he played in the French incident and they are especially severe when they animadvert upon his opposition to Washington. It is difficult to see why this habit has not been laid aside. Freneau as a partisan of France had for company the greatest and wisest of the land, patriots and statesmen and scientists. The heart of America, its generosity, its justice, its pride, its gratitude were all on the side of giving assistance to the French. Policy alone dictated neutrality. Freneau, knowing nothing of policy, and failing to appreciate the wisdom of Washington's course, resisted the government in its effort for neutrality. Washington as the head of the government could not escape criticism, and Freneau did not spare him. Yet Freneau's part in the widespread and violent opposition to Washington has been grossly misrepresented. After reading the story of the French episode as it is usually told,

⁶¹ Jefferson's Works, vol. i, p. —.

⁶² *National Gazette*, July, 1793.

one would expect to find the National Gazette filled with scandalous and scurrilous attacks upon the president. As a matter of fact one will find there nothing of the kind. There are some pretty sulphurous passages in that paper, and no wonder. There were blows to give as well as blows to take. When Fisher Ames spoke of those who supported the French cause "as salamanders that breathed only in fire, as toads that sucked in no aliment from the earth but its poison, as serpents that lurked in their places the better to concoct their venom,"⁶³—when a federalist talked that way about French democrats in America, we can scarcely expect the reply of the democrat to be as gentle as the cooing of a dove. But the savage passages in the National Gazette are not directed against Washington. The most offensive paragraph that can be found in Freneau's paper is, unquestionably, one that comments upon the president's proclamation of neutrality. It reads: "I am aware, sir, that some court satellites may have deceived you with respect to the sentiment of your fellow citizens. The first magistrate of a country whether he be called king or president seldom knows the real state of a nation, particularly if he be so buoyed up by official importance as to think it beneath his dignity to mix occasionally with the people. Let me caution you, sir, to beware that you do not view the state of the public mind at this critical moment through a fallacious medium. Let not the little buzz of the aristocratic few and their contemptible minions of speculators, tories and British emissaries, be mistaken for the exalted and generous voice of the American people." The ugliest and coarsest sentence that Freneau published against Washington is to be found in the paragraph just quoted. It was most certainly not written by Freneau, yet he must be held responsible for it. When it is examined and compared with other pasquinades of the time it must be admitted that its tone was mild and

⁶³ Fisher Ames' Works, vol. ii.

decent. It is equally mild and decent when compared with editorial utterances of our own day.

Personally Freneau shared the general regard and reverence for Washington, and he let no opportunity slip for paying tribute to the great man. If placed together, the verses written by Freneau in Washington's praise would make a comfortable little volume. Even when the French trouble was at its height, he could see the greatness of the man, for, in June, 1793, when Washington was probably the most unpopular man in America, the poet forgot his partisanship far enough to publish in his *Gazette* a graceful and inspiring ode written in the president's praise.

Yet Freneau did not make an idol of Washington. His working hypothesis was that the president was a man after all, and he had but little patience with those who affected to see in Washington a god. It was the fashion in high federal circles to twist every anti-federal sentiment or movement into treason to Washington. "Would to God this same Washington were in heaven," cried Senator Maclay, disgusted with what he thought was Washington-worship. "We would not then have him brought forward as the constant cover to every unconstitutional and irrepublican act."⁶⁴ When soon after Washington's death extravagant and even blasphemous encomiums appeared from every quarter, Freneau thus rebuked their fulsome-ness:

One holds you more than mortal kind,
One holds you all ethereal mind,
This puts you in your Savior's seat
That makes you dreadful in retreat.

One says you are become a star,
One makes you more resplendent far;
One sings that when to death you bowed
Old mother nature shrieked aloud.

We grieve to see such pens profane
The first of chiefs, the first of men;
To Washington—a man who died—
Is "Abba, father," well applied!

⁶⁴ Maclay's *Journal*, p. 351.

He was no god, ye flattering knaves,
He "owned no world," he ruled no waves,
But—and exalt it if you can—
He was the upright HONEST MAN.

In the autumn of 1793, Philadelphia was stricken by a deadly plague. A putrid yellow fever broke out in the city and thousands of victims perished. Half of the population fled into the country. Government offices were closed and business came to a standstill. In the general depression that accompanied the pestilence Freneau suffered with others. His list of talents did not include a talent for business and the finances of his paper were badly managed. Subscribers though often dunned failed to remit; and it was upon subscriptions that the paper chiefly depended, for the editor scrupulously refused to allow advertisements to encroach upon the space allotted to reading matter.

On the 26th of October, the following notice was inserted in the Gazette:

With the present number (208) conclude the second volume and second year's publication of the *National Gazette*. Having just imported a considerable quantity of new and elegant type from Europe, it is the editor's intention to resume the publication in a short time—at the opening of the next congress.

Please send in subscriptions.

 Printers of newspapers may no longer send in exchange until further notice.

About the time of the discontinuance of the newspaper, Jefferson resigned his office, and Freneau was compelled to resign his clerkship in the department of state. It is not absolutely certain that a bankruptcy wound up the affairs of the Gazette. The yellow fever may have driven out Freneau as it drove out thousands of others. Jefferson writing to Randolph said: "Freneau's paper is discontinued. I fear it is the want of money. I wish the subscribers in our neighborhood would send in their money."⁶⁵ In a letter to Wm. Giles, Freneau says: "Sev-

⁶⁵ Jefferson's Works, vol. vi, p. 428.

eral unfavorable circumstances have determined me to a final discontinuance of the National Gazette."⁶⁶ Precisely what the unfortunate circumstances were we do not know. Three causes for abandoning the Gazette are suggested by the facts: Shortage in subscription money, the prevalence of the yellow fever, and the loss of government patronage and of his clerkship through Jefferson's resignation. The publication of the paper was never resumed. Freneau as an editor had done his work.

What was that work? What was the mission of the National Gazette? What was its influence upon American politics and upon the American mind?

We have considerable material from which we may draw answers to these questions, for politicians have expressed themselves freely regarding the National Gazette. For Hamilton's opinion of the paper we are prepared: "As to the complexion and tendency of that Gazette a reference to itself is sufficient. No man who loves the government or is a friend to tranquility but must reprobate it as an incendiary and pernicious publication."⁶⁷ And again: "If you have seen some of the last numbers of the Gazette you will perceive that the plot thickens and that something very like a serious design to subvert the government discloses itself." To Hamilton's mind, then, the Gazette was a most dangerous foe to the government—which happened to be the federalist party.

The testimony of John Adams regarding the influence of Freneau is interesting. "We Federalists," he wrote to Benjamin Stoddard, "are completely and totally routed and defeated. If we had been blessed with common sense we would not have been overthrown by Freneau, Duane, Callendar or their great patron and protector."⁶⁸ In a

⁶⁶ From a letter in the possession of the Pennsylvania Historical Association.

⁶⁷ Hamilton's Works, vol. vii, p. 32.

⁶⁸ John Adams' Works, vol. viii, p. 514.

letter to Thomas Jefferson,⁶⁹ Adams says: "What think you of terrorism, Mr. Jefferson? I shall investigate the motive, the incentive to these terrorisms. I shall remind you of Philip Freneau, Lloyd, Ned Church," etc.—naming other partisan writers. Late in life the aged statesman said: "The causes of my retirement are to be found in the writings of Freneau, Markoe, Ned Church"⁷⁰—and other troublesome newspaper men." It will be seen that when Adams begins to name the writers that have injured his political fortunes, he always puts Freneau at the head of the list. The Editor of the National Gazette seems to have lain like an incubus upon his life. For the year 1791 there is but one entry in his diary and that is a jotting respecting the National Gazette. In writing to Tristam Dalton in 1797 Adams says: "I have ever believed in his [Jefferson's] honor, integrity, love of country and friends. I may say to you that his patronage of Paine and Freneau is and has long been a source of inquietude and anxiety to me."⁷¹ When it assailed Washington, Adams rejoiced, saying that he himself had held the post of libellee-general long enough. The following verses are a sample of the writings that Adams found so destructive of his peace:

TO A WOULD-BE GREAT MAN.

Certat tergeminis tollere honoribus.

Daddy vice, Daddy vice,
One may see in a trice
The drift of your fine publication;
As sure as a gun,
The thing was just done
To secure you—a pretty high station.

Defenses you call
To knock down your wall
And shatter the STATE to the ground, sir,
So thick was your shot,
And hellish fire-hot
They've scarce a whole bone to be found, sir.

⁶⁹ John Adams' Works, vol. ix, p. 582.

⁷⁰ John Adams' Works, vol. iii, p. 414.

⁷¹ Ford's Writings of Jefferson, vol. vii, p. 108.

When you tell us of kings,
 And such petty things,
 Good Mercy! how brilliant your pages!
 So bright in each line
 I vow now you'll shine—
 Like—a glow worm to all future ages.

On Davilla's ⁷² page
 Your Discourses so sage
 Democratical numskulls be puzzle
 With arguments tough
 As white leather or buff,
 (The republican Bull-dog to muzzle).

Fisher Ames expressed his view of Freneau's paper as a factor in politics in these words: "The manifestoes of the *National Gazette* indicate a spirit of faction that must soon come to a crisis. Every exertion is made through their (the republicans') Gazette to make the people as furious as themselves."⁷³

Timothy Dwight of Hartford, "the Metropolitan see of Federalism," upon reading the *Gazette* was moved to express himself thus: "Freneau your printer, linguist, etc., is regarded here as a mere incendiary and his paper is a public nuisance."⁷⁴

Oliver Wolcott was not quite so severe but he hits the nail pretty squarely on the head when he said that it was the settled purpose of the *National Gazette* to destroy the popularity of the leading men of our country.⁷⁵

Rufus King complained that the censures of the *National Gazette* were creating a dissatisfaction with the government.⁷⁶

Freneau's friends have not placed on record as much evidence of the great influence of the *Gazette* as his enemies have left; yet they have not been silent. We have already seen that Jefferson estimated the *Gazette* as being

⁷² Adams' Discourses of Davilla—a treatise defending strong government.

⁷³ Fisher Ames' Works, vol. i, p. 128.

⁷⁴ Gibbs' Washington's and Adams' Administration, vol. i, p. 109.

⁷⁵ *Ibid.*

⁷⁶ Life and Correspondence of Rufus King.

one of the strongest influences in American politics. In his judgment, it was the *Gazette* that saved the United States from drifting into monarchy. The great democrat watched the paper with an anxious eye and its success brought him the highest satisfaction. "Freneau's paper," he wrote to a friend, "is getting into Massachusetts under the patronage of Hancock and Samuel Adams, and Mr. Ames the colossus of the monocrats, will either be left out or have a hard run. The people of that state are republican, but hitherto they have heard nothing but the hymns and lauds of Feno.⁷⁷"⁷⁷

James Madison was also gratified at the work which his old friend was doing in the cause of democracy. "Freneau's paper," he said, "justifies the expectations of his friends and merits the diffusive circulation they have endeavored to procure it."⁷⁸

From the contemporaries of the *National Gazette*, we may glean some matter that will enable us to form a judgment as to the part it played in the propaganda of democratic doctrine. In the unfriendly *Connecticut Courant* we find this tribute to its influence: "From the *National Gazette* whence in streams pure and smoking like a drain from a whiskey distillery it is conveyed to reservoirs established in every part of the community."⁷⁹

In the friendly *Independent Chronicle*, of Boston, we read: "As the friends of civil liberty wish at all time to be acquainted with every question which appears to regard the public weal, a great number of gentlemen in this and neighboring towns have subscribed for Mr. Freneau's *National Gazette*."⁸⁰

The *Halifax Journal* of North Carolina attributes the defeat of Mr. Adams in that state to the discussion of his career in the columns of Freneau's paper. The South

⁷⁷ Jefferson's Works, vol. iii, p. 491.

⁷⁸ Madison's Works, vol. iv, p. 543.

⁷⁹ *Connecticut Courant*, 1792.

⁸⁰ *Boston Independent Chronicle*, 1793.

Carolina Gazette was so enraged by Freneau's opposition to the measures of government, that it called for his punishment.

These utterances of friends and foes ought to give us a fairly correct notion of Freneau's place in the history of our politics. They teach us that he was hated and feared as the greatest editor of the democratic party. His paper was published in the seed-time of democracy in America. The soil of party politics was virgin and Freneau sowed with a lavish hand. To the federalist mind it seemed that the seeds he was sowing were dragons' teeth which would one day spring up as giants and destroy society and government. Society and government were not injured by the principles advocated by the editor, but the federalist party was.

The part Freneau played in the making of democratic sentiment may be summed up as follows:

1. He was the ablest champion of what is known as "Jeffersonian simplicity." The war which he waged upon titles, distinctions, and court-like ceremonies was successful and decisive.

2. Through his paper the strongest opposition to Hamilton's centralizing schemes found expression. If Freneau had not early checked Fenno, it may be that loose construction would have run away with the constitution.

3. Freneau's paper did much to give a French coloring to our political philosophy. The doctrines of liberty, fraternity, equality, of equal rights to all and special privileges to none, was unwelcome to many American minds in Freneau's day, yet this was the keynote of all Freneau's writings. The editor of the National Gazette was the schoolmaster who drilled Jeffersonian or French Democracy into the minds—willing or unwilling—of the American people.

Freneau's place in the history of journalism is distinct and eminent. He is the prototype of the partisan editor.

A recent student of the history of American journalism thus speaks of him:

“Next to Washington, Jefferson and Hamilton, one figure assumes a prominence superior to that of all others engaged in the political contest, not so much perhaps by the weight of his intellect as by his versatility and vivacity and the keenness and the readiness of the weapons he brought to the contest. We refer to Philip Freneau. What Tyrtaeus was to the Spartan was Freneau to the republicans or anti-federalists. In all the history of American letters or of the United States press there is no figure more interesting or remarkable, no career more versatile and varied than that of Philip Freneau.”⁸¹

⁸¹ Magazine of American History, vol. xvii, p. 121.

CHAPTER IV

THE POET OF THE WAR OF 1812

Freneau had just entered his forties when he ceased to publish the *National Gazette*. He had given two of the best years of his life to that paper, but there was a long span still before him. Immediately upon leaving Philadelphia he went to Charleston, South Carolina, to visit his brother Peter. Peter Freneau was a democratic editor of repute, the Secretary of State of South Carolina, and Jefferson's political manager in that state. Philip was well received in Charleston and he made friendships while there which were genuine and lasting.

After a pleasant sojourn of several months in the South, Freneau returned to his New Jersey home. There he spent a year or two doing nothing of importance, unless it was to write an occasional attack upon the government and print it in Bache's "*Aurora*,"—just to let John Adams know that Philip Freneau was still living. With letters in his pocket from Jefferson and Madison recommending him for "his sound discretion and extensive information" the editor applied for the managership of a projected newspaper in New York, but nothing came of that scheme.¹ We may remember that when he closed up the affairs of the *National Gazette* he had on hand "a considerable quantity of new and elegant type." This type he seems to have removed to his old home in Mount Pleasant, near Middletown Point (now Mattawan), New Jersey, where he set up as a practical country printer. Following the bent of his genius he tried journalism again, this time in the rôle of a country editor. May 2, 1795, he printed

¹ Hudson's History of Journalism, p. 187.

the first number of the "Jersey Chronicle." A copy of this quaint journal is preserved in the library of the New York Historical Society. It is a little typographical failure, in the form of a quarto, precisely seven inches by eight.

Freneau made his bow to his rural constituents in these lines: "The Editor in the publication of this paper proposes among other things to present his readers with a complete history of the foreign and domestic events of the times, together with such essays, remarks, and observations as shall tend to illustrate the politics or mark the general character of the age and country in which we live." We learn also from the paper that P. Freneau was ready and willing to print Handbills and Advertisements at the shortest notice, and upon the most reasonable terms. The political tone of the Chronicle was of course democratic, and the editor never failed to deal an opportune blow at the political aspirations of John Adams and Alexander Hamilton.

But the chronicle did not prosper. "Newspapers," says Hudson, "have not made their mark in New Jersey as in many of the old states. Situated between New York and Philadelphia, it has been placed in a position to enjoy the news facilities of those two cities."² After a year of struggle the editor announced the discontinuance of the paper, embracing the opportunity "to return his sincere thanks to such persons as had favored him with their subscriptions and had by their punctuality enabled him to issue a free, independent and republican paper."

Another literary venture of 1795 was more successful. Having collected all his poems he published such as he deemed worthy in an octavo volume at his own press. The motley type that greets the eye in this interesting volume was probably set by the poet's own hands. This is the most important edition of Freneau's poetical works that we have. It contains nearly three hundred poems written in almost every variety of metre and is "a treasury

² Hudson's Journalism in the United States, p. 187.

of song, tale, satire, epigram and description." In this leather-bound, worm-eaten volume is to be found nearly all that is good, as well as nearly all that is inferior in Freneau. The inferior forms the larger part of the book, to be sure, but there is enough genuine poetry scattered through the volume to keep it utterly from perishing. His volume of 1787 has been deemed worthy of being reprinted in recent years; the volume of 1795 is still more worthy of being rescued from oblivion.

Freneau was not at all disheartened by the failure of the Chronicle. He had lived all his life amid the wreck of newspapers, and for one to go down was to him the most natural thing in the world. Hardly had the little rustic sheet succumbed than he tried his luck again. In March, 1797, in the city of New York, he offered to the reading public the first number of his "Time-Piece and Literary Companion."

This paper was to be a "vehicle for the diffusion of literary knowledge, news, and liberal amusement in general." At first Freneau associated with him as printer one A. Menut, a Canadian. Menut in a short time dropped out and M. L. Davis, a democratic politician of some importance, took his place. Freneau and Davis managed (or mismanaged) the paper until March, 1798, when Freneau withdrew and left Davis the sole manager. Davis kept the paper going until August, 1798, when the Time-Piece went the way of the other ventures.

The Time-Piece is an interesting *potpourri* of literary performances, ranging from discussions upon the cultivation of pumpkins, to schemes for the reorganization of society upon principles of natural right. The political sentiments of the paper were of the purest Jeffersonian quality. It declared for rotation in office, pure and frequent elections, a free church, a free press, and the abolition of entails. As one turns over the leaves of this rare file one cannot but praise the versatility and tact of the editor in catering to the public taste.

When the yellow fever broke out in Philadelphia, Fre-

neau had removed his family to his old home in Mount Pleasant where a portion of his inheritance still remained to him. In this quiet village (the name of which, by the way has recently been changed to Freneau) the poet, when not upon the sea, spent most of the remaining years of his life. In his retirement his literary activity did not cease. The magazines of the day welcomed his poetry and he contributed to them constantly. Among those occasional pieces we find one upon the death of Washington. It is a gracious tribute, and bespeaks magnanimity and large-heartedness; for the truth is, Freneau had no reason to love Washington. The country, however, had reason to love its great chief, and Freneau sang the songs of his country.

As a publicist he still couched a lance for the republican party. His political pieces generally appeared in Bache's Aurora, the political successor of the National Gazette. In 1799, he collected a few of these productions and had them printed in a small octavo volume under the title: "Letters on Various Interesting and Important Subjects, many of which have appeared in the Aurora. Corrected and Much Enlarged. By Robert Slender, O. S. M."

O. S. M., being interpreted, is, "One of the Swinish Multitude." These essays were very spicy and some of them illustrate excellently Freneau's method of striking at a political enemy. For instance, here is one which shows how he went about making life unpleasant for John Adams, and incidentally damaging the chances of the second president for a second term:

THE EPITAPH OF JONATHAN ROBBINS.³

(Robert Slender, *Loquitur.*)

I have just seen the end of Robbins, poor, brave, injured, betrayed, unfortunate Robbins. I have seen him

³ This Robbins was a sailor who was delivered up to the English by the order of an American court, and was hanged on the charge of inciting mutiny on board the English frigate *Hermione*. Robbins claimed to be an American citizen, and much political capital was made out of the episode.

with my "minds eye" as Hamlet says, and a horrid spectacle it was. I have just been composing his epitaph, that will go down to posterity on the faithful and impartial page of history. Here it is:

Reader
If thou be a Christian and a Freeman,
consider

by what unexampled causes
It has been necessary to construct
This monument
of national degradation
and
Individual injustice;
which is erected

To THE MEMORY of a Citizen of the United States,
JONATHAN ROBBINS, MARINER,
A native of Danbury, in the pious and industrious state of
Connecticut:

who
Under the PRESIDENCY OF JOHN ADAMS.

And by his advice,

Timothy Pickering being Secretary of State,
Was delivered up to the British government,
By whom he was ignominiously put to death;
because,

Though an American Citizen,
He was barbarously forced into the service of his country's
worst enemy
and compelled to fight
Against his conscience and his country's good

On board the British frigate Hermione
Commanded by a monster of the name of Pigot.

He

Bravely asserted his rights to freedom as a man and boldly
Extricated himself from the bondage of his tyrannical
Oppressors

After devoting them to merited destruction.
If you are a seaman

Pause:—

Cast your eyes into your soul and ask
If you had been as Robbins was
What would you have done?
What ought you not to do?

And look at Robbins
Hanging at a British yard-arm!

He was your comrade—

And as true a tar as ever strapped a block:
He was your fellow-citizen,

And as brave a heart as bled at Lexington or Trenton.

Like you
 He was a member of a Republic
 Proud of past glories
 and
 Boastful of national honor, virtue, and independence.

Like him
 You may one day be trussed up to satiate British vengeance,
 Your heinous crime
 daring to prefer danger or death
 To a base bondage—
 Alas, poor Robbins!
 Alas, poor Liberty!
 Alas, my Country!

In the following we see Freneau as a campaign swash-buckler:

OYEZ!!!

“ Robert Slender, to the aristocrat, the democrat, the would-be noble, ex-noble, the snug farmer, the lowly plebeian, the bishops and clergy, reverend and right reverend, doctors, and V. O. M.’s little men or title men, gentlemen and simple men, laymen and draymen, and all other men except hangmen (to whom he hath an aversion) throughout this great and flourishing STATE sendeth greeting:

“ Whereas a great and important day draweth near in which you are to exercise a great right, no less than to choose, elect, set apart, solemnly dedicate, appoint and highly honor either Thomas McKean, chief judge of Pennsylvania, or James Ross, practitioner at law, with the high sounding title, power and authority of Governor of the State—Having thrown off his apron, laid aside his tools, and neglected for a small time the honorable and ancient employment of shoe-mending, he hath an account of the great division, dissension and contradiction that exists, the fictions, lies, stories, calumnies, misinterpretations, wrong interpretations, assertions and computations, thought proper not to address one of you but all of you, to call upon you in the most solemn manner, to be upon your guard, to open your ears and attend to even a mender of shoes.

“ Ye aristocrats and great men, whether merchants, doctors, proctors or lawyers, who sigh for greatness and long for dominion, whose hearts yearn for the glory of a crown, the splendor of a court, or the sweet marrow bones that are to be picked in his majesty’s kitchen, whose eyes ache painfully once again to see the stars, crosses, crescents, coronets, with all the hieroglyphical, enigmatical, emblematical and all the other cals including rascals, which adorn the courts of kings—give a strong, true and decided vote for James Ross, who supports, approves, hopes for, longs for, and sighs for all these.

"Ye bishops and clergy, adorers of the triple crown, the mitre, the sable, the high seat in civil power, the much longed for and established church, and the ancient and profligate thing called tithes unite your forces, set Christianity at a defiance and give a firm vote for James Ross.

"Ye old tories and refugees, British spies, speculators, guides and pensioners, approvers of British policy, aimers and designers, who in your hearts wish again to crouch under the protecting paw of the British lion—arrange your forces and give a fair vote for James Ross.—He is your sincere friend.

"Ye supporters of the British treaty, alien bill, stamp act, excise, standing army, funding system, who believe that a public debt is a public blessing, who say that republicanism is anything or nothing, and maintain that treaties made under the sanction of the Constitution are superior to it—draw near—be not idle on the day of election, support James Ross; he thinks as ye do, acts as you act, and will follow where you lead.

"Ye democrats, soldiers of '76, ye supporters of our independence, ye quellers of Great Britain, ye Americans in heart and in hand draw near, remember that Thomas McKean is your brother, the firm freeman, and the real christian—give him your vote.

"Ye free-born Americans, whose hearts beat high for liberty and independence, who fear not the threats and disdain the power of all the tyrants on earth, assert your rights, make known that ye have not forgotten the late struggle, that the mean devices and shallow arguments of the X Y and Z's of the present day are not able to trick you out of your liberty or to make you the tools of a foreign despot—vote for Thomas McKean—the constant asserter of your rights and liberties.

"Ye honest, ye independent, ye virtuous farmers, who sincerely wish to support that unequalled and glorious instrument, the Constitution of the United States, untarnished and unadulterated that ye may have it whole and entire, a sacred deposit to posterity, your best interest is at stake, join not with that troop but give an honest vote for Thomas McKean, the asserter, the supporter and defender of the invaluable rights of his country.

"Ye honest and industrious mechanics who daily sweat for the support of your families, who in the hour of danger are ever found foremost in the ranks to defend your own and your country's rights, vote for Thomas McKean, whom great men cannot make wink at injustice and oppression.

"Let Porcupine growl, Liston pet, the long list of English agents, speculators, approvers of the fate of Jonathan Robbins, tories and refugees, gnash their teeth in vain; be true to your country, proof against bribery, true to posterity, true to yourselves, arrange ye under the banner of freedom and once more conquer, let the word be LIBERTY and MCKEAN!"

Freneau promised that if this volume should prove successful another would follow, but no such encouragement

followed. When these pieces came out in the *Aurora* they were interesting, but they were of a day. The volume seems to have fallen flat and a second collection of Mr. Robert Slender's Essays did not appear.

Write and edit and reprint as much as he would, Freneau could not get a living out of literature. To provide for his family the poet again went down to the sea and, about the year 1799, became the captain of a merchantman. For seven or eight years from this date it is hard to keep trace of him. It is only from poems commemorative of scenes or events upon his voyages that we are enabled to get an occasional glimpse of him. In 1801, he was on the island of St. Thomas, and two years later upon the island of Madeira. While strolling around in the elegant shades of Madeira, Freneau, coming up with the god Bacchus, Prince of Madeira, straightway indited him an ode:

I met him with awe, but no symptoms of fear,
As I roved by his mountains and springs,
When he said with a sneer, "How dare you come here
You hater of despots and kings?"

"Haste away with your barque on the foam of the main,
To Charleston, I bid you repair;
There drink your Jamaica that maddens the brain,
You shall have no Madeira, I swear.'

But Freneau conciliated the god and sampling some of his choicest wines heaped upon him and them unstinted praise. As Freneau grew older his praise for Bacchus mounted higher and was sounded oftener. When a poet dwells fondly on this theme, one suspects that he is taking too much to strong drink. There is a reason to think Freneau was no exception to the rule.

In 1804, Captain Freneau sailed to the Canary Islands. While upon Teneriffe, he was invited to visit a celebrated nunnery there. He declined the invitation in verse. Thus we may see that a stretch of years was passed upon the deep, sailing sometimes from New York, sometimes from

Charleston to the West Indies and the remote islands of the Atlantic.

In 1807 the poet-captain abandoned his vocation as a sailor never to resume it.⁴ On a return voyage, as he approached the heights of Navesink behind which a few miles away lay his home, a longing for retirement seized upon him.

Proud heights with pain so often seen,
(With joy beheld once more)
On your firm base I take my stand
Tenacious of the shore.
Let those who pant for wealth or fame
Pursue the watery road.
Soft sleep and ease, blest days and nights,
And health attend these favorite heights,
Retirement's blest abode.

In a letter to Jefferson written in 1815 he thus writes of his retirement: "Since my last return from the Canary Islands in 1807 to Charleston and from thence to New York with my brigantine Washington, quitting the bustle and distraction of active life, my walks have been confined, with now and then a short excursion, to the neighborhood of Navesink Hills and under some old hereditary trees and on some fields which I well recollect for sixty years. During the last seven years my pen could not be entirely idle and for amusement only now and then I had recourse to my old habits of scribbling verse."⁵

Freneau was fifty-five years of age when he withdrew from serious occupation. Hitherto his life had been one uninterrupted storm; henceforth it was to be one long calm. It is a pleasant picture which he draws of himself in his quiet home.

Happy the man who safe on shore,
Now trims at home his evening fire;
Unmoved he hears the tempests roar,
That on the tufted groves expire.

⁴ Jefferson's MS. in Archives of State Department at Washington.

⁵ Jefferson's MSS. in Archives of the State Department at Washington.

Although politics and the sea were forsaken, Freneau remained faithful to his muse. His ruling passion was strong to the last. No passing event worthy of commemoration was allowed to go unsung. In 1809 he prepared for the press a fourth edition of his poems, the work appearing in two volumes neatly printed with striking cuts for frontispieces.

“These poems,” the author tells us, “were intended to expose to vice and treason their hideous deformity; to depict virtue, honor and patriotism in their natural beauty. To his countrymen in the Revolution, to Republicans and the rising generation who are attached to their sentiments and principles, the writer hopes this collection will not prove unacceptable.” The book was gotten out on the strength of a subscription and in the first volume are printed the names of the subscribers. The subscription plan was set a-going by the publishers without the author’s knowledge or approbation. Thomas Jefferson subscribed for ten volumes. In Jefferson’s letter to Freneau promising a subscription, he says: “I subscribe with pleasure to the publication of your volume of poems. I anticipate the same pleasure from them which the perusal of those heretofore published has given me. . . . Under the shade of a tree one of your volumes will be a pleasant pocket companion. Wishing you all possible success and happiness, I salute you with constant esteem and respect.”⁶ James Madison, then president, also subscribed for ten volumes. The popularity of the poet seems to have been greatest in Pennsylvania. In Philadelphia a bookseller subscribed for 200 copies; in Lancaster a dealer engaged to take 150 copies. A host of subscribers came from South Carolina where the name of Freneau was held in high esteem. In all, about one thousand copies were taken by subscription. We must not despise this small number. Looked at in its relation to the number of

⁶ Jefferson’s MS. in Archives of the State Department at Washington.

people, it is as large as an edition of ten or fifteen thousand copies to-day would be. What poet of our time can do better with his fourth edition?

The edition of 1809 is neither so picturesque nor so valuable as the edition of 1795. Many of the poems of the earlier volume have been crowded out for the later performances, and rarely has there been any gain by the substitution. Nevertheless in the six hundred pages of the two volumes there was more good poetry than any American writer had yet produced, for in 1809, be it remembered Longfellow was but two years old, Poe and Holmes were infants, Bryant had just entered his teens and Lowell was not yet born.

The clash of arms that announced for the second time American resistance to British aggression was a signal for the old poet to tune his harp anew. As he had been the poet of the Revolution so now he became the poet of the war of 1812. Nothing throughout his life gave him more pleasure than to extol his countrymen at the expense of England. It was the poet's way of indulging hatred. He followed closely the progress of the second war and many a ballad from his pen celebrated the glory of our armies upon land and upon sea. His pieces, we are told, were held in great favor by sailors, and were for many years reprinted in broadsides and sold at all our ports.⁷ In 1815, he collected most of these martial performances and printed them in two small volumes at the press of David Longworth, of New York city. On the title page of this rare and forgotten edition the poet thus bids defiance to England:⁸

Then England come! a sense of wrong requires
To meet with thirteen stars your thousand fires,
Through these stern times the conflict to maintain,
Or drown them with your commerce in the main.

⁷ Griswold's American Poets, p. 34.

⁸ The title is: A collection of Poems on American Affairs, and a variety of other subjects chiefly moral and political. By Philip Freneau.

The theme of the first poem of these volumes of his old age is the theme of his life—democracy. In the opening lines we recognize the philosophy of Jefferson and the policy of Madison:

Left to himself, where'er man is found,
In *peace* he aims to walk life's little round,
In peace to sail, in peace to till the soil,
Nor force false grandeur from a brother's toil;
All but the base, designing, scheming few
Who seize on nations with a robber's view,
These, these with armies, navies potent grown,
Impoverish man and bid the nation moan;
These with pretended balances of state
Keep worlds at variance, breed eternal hate,
Make man the poor, base slave of low design,
Degrade the nature to its last decline,
Shed hell's worst blots on his exalted race,
And make them fear, and mean to make them base.

The following stanzas were written when England had about reached the end of her tether in her policy of terrorizing American commerce and when war was about to be declared. They are bad from the critic's point of view, but there is a ring and a movement about them which is distinctly bellicose and which must have been taking with those who wanted to fight.

Americans! rouse at the rumors of war
Which now are distracting the hearts of the nation,
A flame blowing up to extinguish your power,
And leave you a prey to another invasion;
A second invasion as bad as the old,
When, northward or southward wherever they strolled,
With heart and with hand, a murdering band,
Of vagrants come over to ravage your land;
For liberty's guard you are ever arrayed,
And know how to fight in sun or in shade.

Remember the cause that induced you to rise,
When oppression advanced with her king making boast,
'Twas the cause of our nation that bade you despise,
And drive to destruction all England's proud host,
Who with musket and sword, under men they adored,
Rushed into each village and rifled each shade,
To murder the planter and ravish the maid.

All true-born Americans join as of old
For Freedom's defense be your firm resolution;
Whoever invades you by force or by gold,
Alike is a foe to a free constitution;
Unite to pull down that imposture, a crown,
Oppose it, at least, 'tis a mark of the beast,
All tyranny's engines again are at work
To make you as poor and as base as the Turk.

After the best is said, it must be confessed that Freneau's last work was his worst. The edition of 1815, like most of his poetry, consisted chiefly of occasional pieces and it is the usual fate of occasional pieces to be speedily forgotten. The volume was reviewed in the "Analectic Magazine"—a New York periodical—in a kindly tone. "A considerable part of the present collection," wrote the critic, "relates to the transactions of the late war and scarcely a memorable incident either on land or water has escaped the glance of his ever-vigilant and indefatigable muse. He depicts land and naval fights with much animation and gay coloring, and being himself a son of old Neptune, he is never at a loss for appropriate circumstances and expressive dictum when the scene lies at sea. His martial and political ballads are free from bombast and affectation and often have an arch simplicity of manner that renders them striking and poignant. The strains of Freneau are calculated to impart patriotic impulses to the hearts of his countrymen and their effect in this way should be taken as a test of their merit."⁹

With the war of 1812 and the appearance of the poems just noticed, Freneau's career as a writer ended. A short poem under his name may now and then be found in the magazines and newspapers up almost to the time of his death, but writing was no longer a serious business with him. His last years were spent in rural retirement in his New Jersey home. He was, however, far from being a recluse. New York was easily accessible by boat and he frequently visited the scenes of his better days. He could

⁹ *Analectic Magazine*, 1815.

not forget his old democratic friends and they do not seem to have forgotten him. Jefferson, when president, is said to have remembered him with special favor. The story goes that Jefferson sent to Frenéau asking him to come to Washington on important business, and that the poet replied in these words: "Tell Thomas Jefferson that he knows where Philip Freneau lives and if he has important business with him let him come to Philip Freneau's house and transact it." This bumptiousness (if Freneau was really guilty of using these words), did not alienate Jefferson, for later he tendered the poet an office under the government. The position was declined.¹⁰

In New York literary circles he was affectionately received as the "Veteran Bard of the Revolution." We have a charming account of the personal life of the poet in his old age, written by one who knew him well. The sketch is rambling and somewhat garrulous, yet it is so graphic that it must be quoted at length:¹¹ "Freneau was widely known to a large circle of our most prominent and patriotic New Yorkers. His native city, with all his wanderings, was ever uppermost in his mind and affections. He was esteemed a true patriot, and his private worth, his courteous manner and his general bearing won admiration with all parties. His pen was more acrimonious than his heart. He was tolerant, frank in expression, and not deficient in geniality. He was highly cultivated in classical knowledge, abounding in anecdotes of the revolutionary crisis, and extensively acquainted with prominent characters.

"It was easy to record a long list of eminent citizens who ever gave him a cordial welcome. He was received with the warmest greetings by the old soldier, Governor George

¹⁰ New Bedford Mercury, 1884.

¹¹ The quotation is from the pen of Dr. J. W. Francis, a former president of the New York Historical Society. It was written at the request of E. A. Duyckinck, who wished it for his article on Freneau in his *Cyclopedia of American Literature*.

Clinton. He also found agreeable pastime with the learned Provoost, the first regularly consecrated Bishop of the American Protestant Episcopate, who himself shouldered a musket in the revolution and hence was called the fighting Bishop. They were allied by classical tastes, a love of natural science and ardor in the cause of liberty. With Gates he compared the achievements of Monmouth with those of Saratoga; with Col. Fish he reviewed the capture of Yorktown; with Dr. Mitchell he rehearsed from his own sad experience the physical sufferings and various diseases of the incarcerated patriots of the Jersey prison-ship; and descended on Italian Poetry and the piscatory eclogues of Sannazius. He, doubtless, furnished Dr. Benjamin De Witt with data for his funeral discourse on the remains of the 11,500 American Martyrs. With Pintard he could laud Horace and talk largely of Jones; with Sylvanus Miller he compared notes on the political clubs of 1795-1810. He shared Paine's vision of an ideal democracy.

"I had when very young read the poetry of Freneau and as we instinctively become attached to the writers who first captivate our imaginations, it was with much zest that I formed a personal acquaintance with the revolutionary bard. He was at that time about seventy-six years old when he first introduced himself into my library. I gave him a hearty welcome.

"New York, the city of his birth, was his most intimate theme; his collegiate career with Madison, next. His story of many of his occasional poems was quite romantic. As he had at command types and a printing-press, when an incident of moment in the Revolution occurred he would retire for composition or find shelter under the shade of some tree, indite his lyric, repair to the press, set up his types, and issue his productions. There was no difficulty in versification with him. I told him what I had heard Jeffrey, the Scotch Reviewer say of his writings, that the time would arrive when his poetry like that of Hudibras, would command a commentator like Gray.

"It is remarkable how Freneau preserved the acquisitions of his early classical studies, notwithstanding he had for many years in the after portion of his life been occupied in pursuits so entirely alien to books.

"There is no portrait¹² of the patriot Freneau; he always declined the painter's art and could brook no counterfeit presentment."

Nearly twenty years of life after his work was over, were left to the poet in which he might mingle with old associates and discuss the past. It is regrettable that the discussion was too often conducted at the tavern over the flowing bowl. When the old bard looked back upon the road he had travelled, he saw it rough and stony; when he looked forward to the little journey that remained, the prospect was still barren and forbidding. His once ample estate had nearly slipped out of his hands. The records of the county court tell of sales of portions of the land of Philip Freneau and of foreclosures of mortgages upon his property.¹³

A short time after the war of 1812, while the poet and his family were at church, his house at Mount Pleasant was burned and all his correspondence and unpublished writings were consumed. One cannot help wishing that the letters he had received from Madison and Jefferson might have been saved. Freneau, reduced now almost to poverty, removed his family to a farm-house situated about two and a half miles from the village of Freehold. This house was occupied by the poet until his death. It still stands as a reminder of his worst days, when

"The joys of wine are all his boast;
These for a moment damped his pain,
The gleam is o'er, the charm is lost,
And darkness clouds the soul again."¹⁴

¹² The portrait as usually given of Freneau is not genuine. It was sketched by an artist at the suggestion and according to the representation of members of the poet's family. It is pronounced by those who knew the original to be a fair visualization of the man as he appeared at maturity of life. Poems of the Revolution, p. xxxi.

¹³ Records of Monmouth County Court, 1823, 1826. ¹⁴ Freneau.

One stormy night in December, 1832, the old man left Freehold to walk to his home. "He crossed a bog-meadow to shorten the distance. The blinding snow bewildered him and he lost his way and sank in the morass. He succeeded in getting out and gaining dry ground, but in attempting to climb a fence he fell and broke his hip. When discovered he was lying under an apple-tree at the edge of the meadow—dead."¹⁵

About two hundred yards from the spot where Freneau lived in Mount Pleasant is a neat monument bearing this inscription:

POET'S GRAVE.

PHILIP FRENEAU.

Died Dec. 18, 1832.

Age 80 years, 11 months, 16 days.

He was a native of New York, but for many years a resident of Philadelphia and New Jersey.

His upright and benevolent character is the memory of many and will remain when this inscription is no longer legible.

"Heaven lifts its everlasting portals high
And bids the pure in heart behold their God."

¹⁵ New Bedford Mercury, 1884. De Lancey suggests that Freneau was caught in a "blizzard," and it is likely that he was, for the New York paper of Dec. 18, 1832, contains an account of a violent snow storm. See Albany Daily Advertiser, Dec. 18, 1832.

CHAPTER V

CONCLUSION

We may fitly close this sketch by looking over Freneau's career and making an estimate of his personal character. It is important to do this, for a just conception of Freneau's character must be entertained before a nice judgment upon some points in our political history can be rendered.

In its outward aspects Freneau's life was a failure. As a man of genius he availed himself of the undisputed privilege of that class to be unsuccessful in pecuniary matters. It was the fashion for our revolutionary heroes to languish in jail for debt and to die forgotten and penniless. Freneau's lifeless corpse under the apple-tree reminds us of the sad fate of Robert Morris and Charles Henry Lee and Joel Barlow. The poet inherited a comfortable fortune, but this was dissipated long before his death. For many years he lived from hand to mouth. We have seen that he was intemperate. This was also a privilege in Freneau's day, denied to no one, whether to poet or to preacher. Notwithstanding these shortcomings, we do not find that Freneau was a bankrupt either in character or in reputation. On the contrary we have positive evidence that his manhood was sound. James Madison speaks of his "spotless integrity." His publishers have nothing but praise for his worth as a gentleman and a scholar. His friends in New York remembered him as tolerant, polished and genial.¹ A lady who was a neighbor of Freneau and who frequently visited his house told me (in 1898) that his uprightness and honesty were never called into

¹ Encyclopedia of American Literature, vol. i, p. 333.

question. "He died universally loved and regretted by all who knew him," was the tribute of his old friend John Pintard.² The sturdiness of his nature was illustrated in the management of the *National Gazette*. After his great patron Jefferson had abandoned the cause of the French, Freneau with characteristic imprudence and independence, continued to pour his broadsides into the friends of neutrality.

In matters of religion Freneau was indifferent. He subscribed outwardly to orthodox forms, not because he thought they were true, but because he thought they were useful. He was steeped in the philosophy of Rousseau and Condorcet. For the human mind as well as for human institutions he demanded the utmost freedom.

"Oh, impotent and vile as vain
They who would the native thought restrain!
As soon might they arrest the storm,
Or take from fire the power to warm,
As man compel by dint of might
Old darkness to prefer to light.

"No, leave the mind unchained and free
And what they ought mankind will be;
No hypocrite, no lurking fiend,
No artist, to some evil end,
But good and great, benign and just
As God and nature made them first.³

Like many other poets from David to our own time, Freneau was a pantheist.

"All that we see, above, abroad,
What is it all but nature's God?"

Like that of many poets, it may be added—like that, for instance of Addison or of Steele—his religion was of very little consequence to himself or to any one else. Nevertheless, he tells us that it extended to "a practice of the golden rule, as far as weak nature would permit."⁴

² *New York Mirror*, January, 1833.

³ Freneau's Poems, 1815 edition.

⁴ Essays, Robert Slender, p. 49.

For the austerities of life he had too much contempt. His impatience with puritanism finds an expression in the following verses on "The Puritans":

On Sunday their faces were dark as a cloud,
The road to their meeting was only allowed,
And those they caught rambling on business or pleasure
Were sent to the stocks to repent at their leisure.

This day was the mournfullest day in the week;
Except in religion none ventured to speak.
This day was the day to examine their lives,
To clear off old scores and preach to their wives.

In the school of oppression though woefully taught,
'Twas only to be the oppressors they sought;
All, all but themselves were bedevilled and blind,
And their narrow-souled creed was to serve all mankind.

This beautiful system of nature below,
They neither considered or wanted to know;
And called it a dog-house wherein they were pent—
Unworthy themselves and their mighty descent.

Such writing as this brought upon Freneau the wrath of his New England contemporaries, and earned for him much unwarranted abuse. In Connecticut and Massachusetts the newspapers of his day referred to him as an atheist and the foe of good government, and fame has transmitted this opinion of the man to our own times. Yet there is nothing in the history of Freneau's life to justify such an unfavorable judgment. He was a man of strong conviction and strong utterance and many suffered from the freedom of his lance. A careful examination of his long life, however, reveals nothing in him that was base or low.

With this knowledge of the man's character we are prepared to take up a story that has thrown discredit upon his name and upon the name of Jefferson. The story is that Freneau in his old age said that Jefferson *did* write for the National Gazette; that, indeed, he wrote the most offensive articles that appeared in that paper. In other words, we are told that Freneau admitted that he had

sworn to a lie when he swore before the Mayor of Philadelphia that Jefferson never wrote a line directly, or indirectly, for the *Gazette*. This is the way the story comes down to us: Griswold, an encyclopedia maker, said that Dr. John W. Francis said that Freneau told him that Jefferson wrote for the *Gazette*. This statement if true would make both Freneau and Jefferson the clumsiest of liars. From the nature of the story it cannot be absolutely disproved, but there are strong considerations for not accepting it.

In the first place, Griswold is extremely unreliable. It is not meant that the learned preacher would deliberately put into print what he knew to be false, but it is meant that he was shockingly careless about getting things right. In illustration of this we may take the first page of the first edition (1842) of the "Poets and Poetry of America," where he attempts to sketch Freneau's life. It would be difficult to find a page more pregnant with mistakes and misinformation than this. In one paragraph of four sentences there are five palpable errors. This may be cited as a curiosity of ignorance:

"As a reward for the ability and patriotism he had displayed during the war, Mr. Jefferson gave him (Freneau) a place in the Department of State; but his public employment being of too sedentary a description for a man of his ardent temperament he soon relinquished it to conduct in Philadelphia a paper entitled 'The Freeman's Journal.' He was the only editor who remained at his post during the prevalence of the yellow fever in that city in 1791. The Journal was unprofitable and he gave it up in 1793 to take command of a merchant ship in which he made several voyages to Madeira, the West Indies and other places. His naval ballads and other poems relating to the sea written in this period are among the most spirited and carefully finished of his productions."

Now, (1) Freneau did *not* give up his government position to edit a paper, (2) he did *not* edit the *Freeman's Journal*.

nal, (3) yellow fever was *not* prevalent in Philadelphia in 1791, (4) he did *not* take command of a merchant ship when he left Philadelphia in 1793, (5) his naval ballads were *not* composed in the period of which he is speaking. It is submitted that we should be very reluctant to attach any importance to anything that such a careless writer might rehearse from memory.

In the second place, we know that the same Dr. Francis who is quoted as having cast such a foul imputation upon Freneau's character, regarded the poet as a man of sterling integrity. If Freneau had really admitted that he had committed perjury, Francis would hardly have written these words of the perjurer: "His private worth won the admiration of both parties." Besides, if Freneau had made such an admission, Dr. Francis, the President of a great Historical Association would have appreciated its historical significance and would have himself spoken of it in his sketch of Freneau. In that sketch he does not refer to any such conversation as Griswold reports.

In the last place, Freneau's whole life is a denial of Griswold's statement. The patriot poet was nothing if not straightforward and truthful, and our credulity is strained when we are asked to believe that he deliberately confessed that he was the greatest of liars and the basest of knaves. History is wholly against the supposition that Jefferson ever wrote a line for the *National Gazette* and there is not the slightest reason to believe that Freneau ever said that he wrote for it.

As to Freneau's part in the history of our politics, little need be added to what has already been said. He was not a statesman in any sense of the word. A violent temperament and an intolerant nature unfitted him for the leadership of men, while narrowness of mind made him unsafe as a counsellor. Nor was he a politician in a practical sense. He sought no office and he entered into no combinations to secure party advantage. He did not look to office as a reward for his services as a publicist. He

advocated democracy for its own sake. In the enthusiasm born of sincerity of purpose is to be found his greatest strength. The glow of conviction was upon all his writings, and when he came out with an article denouncing Adams or Hamilton, his words burned themselves into the mind of the public. He appealed to the populace, who read and applauded, and when election time came voted his way. So sure and so uniform was his success in this field that it is safe to say that, excepting Jefferson himself, democracy in America in the first years of our national life had no abler champion than Philip Freneau.

THE PUBLICATIONS OF PHILIP FRENEAU

(A) Newspapers.

1. "The National Gazette." Published at Philadelphia. First number, October, 1791; last number, October, 1793. A complete file of this paper may be found in the collections of the Library Company of Philadelphia.¹ It is difficult to find a complete file elsewhere.

2. "The Jersey Chronicle." Published in Mount Pleasant, New Jersey, in 1795. A file may be found in the library of the New York Historical Society.

3. "The Time-Piece and Literary Companion." Begun March, 1797. Freneau was connected with it less than a year. A file may be found in the Lennox Library in New York.

(B) Books.

1. "A Poem on the Rising Glory of America; being an Exercise Delivered at the Public Commencement at Nassau Hall, September 25, 1771."

This was published at Philadelphia in 1772. It is a small unbound octavo of 27 pages. It may be found in the Library of Princeton College.

Hildeburn has the following note on this publication:

"It is attributed to Judge H. H. Brackenridge and also to Brackenridge and Freneau jointly. In the Edition of Freneau's Poems, printed on his own press and under his supervision at Monmouth in 1809 [he should have said 1795] this poem is given a prominent place without any reference being made to Brackenridge's share in its composition. On the title page of Brackenridge's 'Poem on Divine Revelation' that piece is said to be by the same person who on a similar occasion *delivered* a small poem on the rising glory of America. This may have been the ground

¹ Philadelphia offers the best facilities for the study of Freneau. The Library of the Pennsylvania Historical Society contains nearly all his works.

on which the last-named poem was attributed to Brackenridge. But as it admits of the construction that he only read or recited the earlier poem of which Freneau claims the sole authorship, I have placed it under the latter's name." Hildeburn's *Issues of the Press of Pennsylvania*, vol. ii, p. 148.

2. "Voyage to Boston. A Poem." A small octavo of 24 pages; printed in Philadelphia in 1775.

3. "The British Prison-Ship. A Poem in Four Cantoes." An octavo of 23 pages; printed in Philadelphia in 1781.

4. "New Travels through North America." This is a translation by Freneau of Claude C. Robin's "Voyage dans L'Amerique Septentrionale." This small octavo volume of 112 pages was published in Philadelphia in 1783. It may be found in the library of the Historical Society of Pennsylvania.

5. "The Poems of Philip Freneau, Written Chiefly during the Late War." An octavo volume of 415 pages, published in Philadelphia in the year 1786. This very rare and valuable volume may be found in the Library of the Pennsylvania Historical Society.

6. "A Journey from Philadelphia to New York by way of Burlington and South Amboy. By Robert Slender, Stocking Weaver (Freneau)." This is a small octavo of 28 pages; published in Philadelphia in 1787. It may be found in the New York Historical Library.

7. "The Miscellaneous Works of Mr. Philip Freneau containing his Essays and Additional Poems." Published in Philadelphia, 1788; it may be found in the Library of Congress.

8. "The Village Merchant": A Poem to which is added the Country Printer. A small octavo of 16 pages, printed at Philadelphia in 1794.

9. "Poems Written between the years 1768 and 1794 by Philip Freneau of New Jersey." This was printed at Mount Pleasant in 1795, at the press of the author. It may be found in the Library of Congress, and in the libraries of Harvard and Columbia Universities. This edition contains the major part of Freneau's poems.

10. "Letters on Various and Interesting Subjects many of which have appeared in the Aurora. By Robert Slender, O. S. M." (O. S. M. = One of the Swinish Multitude.) Small octavo of 142 pages. Published in Philadelphia in 1799. It may be found in the library of the Pennsylvania Historical Society.

11. "A Laughable Poem on Robert Slender's Journey from Philadelphia to New York." This is a reprint under a new title of No. 6.

12. "Poems Written and Published during the American Revolutionary War, and now Republished from the Original Manuscripts interspersed with Translations from the Ancients, and other pieces not heretofore in print." Published in two duodecimo volumes in Philadelphia in 1809. It is to be found in the library of the Pennsylvania Historical Society.

13. "A Collection of Poems on American Affairs, written between the year 1797 and the Present Time." Published in New York in two duodecimo volumes in 1815. To be found in the Boston Public Library and in the Library of Congress.

14. "Poems on Various Subjects, but chiefly illustrative of the Events and Actors in the American War of Independence." This is a reprint of the edition of 1786. It was published in *fac-simile* in London in 1861 by J. R. Smith.

15. "Poems Relating to the American Revolution." With an Introduction, Memoir, and Notes by E. A. Duyckinck, New York, 1865.

16. "Some Account of the Capture of the Ship Aurora." New York, 1899.

CONTINENTAL OPINION REGARDING A
PROPOSED MIDDLE EUROPEAN
TARIFF-UNION

SERIES XX

Nos. 11-12

JOHNS HOPKINS UNIVERSITY STUDIES

IN

HISTORICAL AND POLITICAL SCIENCE

(Edited 1882-1901 by H. B. Adams.)

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CONTINENTAL OPINION REGARDING
A PROPOSED MIDDLE EUROPEAN
TARIFF-UNION

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BALTIMORE
THE JOHNS HOPKINS PRESS
PUBLISHED MONTHLY
NOVEMBER-DECEMBER, 1902

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THE JOHNS HOPKINS PRESS

The Lord Baltimore Press
THE FRIEDENWALD COMPANY
BALTIMORE, MD.

CONTINENTAL OPINION REGARDING A PROPOSED MIDDLE EUROPEAN TARIFF-UNION

In the European press, more especially in that of Germany, one often meets with the expression "Middle European Zollverein." A study of its content reveals the existence of a movement—more academic than political—contemplating, for one reason or another, greater unity of action on the part of certain European countries, primarily Germany and Austria-Hungary.

The purpose of this article will be to describe this movement and set forth European opinion with reference to a subject whose possible realization might be fraught with enormous economic consequences to the United States.

The tendencies which operated to make of England and France modern states were counteracted in the countries to the east—primarily Germany and Austria—by other forces. Unity, however, among the states of middle Europe is not a new idea. It existed for centuries under the name of the "Holy Roman Empire." This fiction ceased in 1806, and in 1815, after the Napoleonic wars, there was formed in its stead the "Germanic Confederation" which lasted until 1866. This governmental organization had no real power but all the weaknesses which characterized the Government of the United States under the "Articles of Confederation." Almost contemporaneously with its inception there was formed in Prussia in 1818 an economic measure known as the "Zollverein." Beginning with Prussia this Verein gradually absorbed other German states so that by 1834, when it assumed the

name of the German Zollverein, it included practically all the German states excepting Austria and Hanover. This exclusion of Austria brings us to the first chapter in the consideration of a "Middle European Zollverein," using this term in its modern acceptation. Between 1834 and 1866 Austria attempted repeatedly to ingraft herself as a member—or rather as the leading member—of this German Zollverein. Her exclusion was a matter of politics rather than economics, or as Prof. Lotz of Munich in a conversation once expressed it: "Economic events invited union; political events, disunion." The duel was between Prussia and Austria and the question was as to which of them should play the chief rôle in German politics. The smaller German states were an uncertain quantity in this duel. The first crisis happened in the early sixties when, after France had inaugurated her so-called "free-trade era" by a commercial treaty in 1860 with England, the question was presented to the German states whether they should form a treaty with France wherein the tariff-rates would be radically lowered. Austria was hopelessly protectionist and in this direction the South German states, especially Bavaria and Wurtemburg, had a strong leaning. In Prussia, although there was a strong protectionist element, many classes, particularly the merchants at the seaports, the large land-owners and the Bureaucrats, had quite the opposite tendency. Bismarck, however, solved the question for Prussia by forming a treaty with France in 1862 and making its acceptance and the exclusion of Austria, a *sine qua non* to a renewal of the Zollverein. The question received a more definite solution by the events of 1866. Thus the first attempts to form a Middle European Zollverein—whose aim was essentially a protection of manufacturing interests against English competition—ended in a failure.

In the latter part of the seventies we find, however, totally different economic forces at work. The agricultural development, particularly in the United States, coupled with improved means of transportation and an enor-

mous industrial awakening in Germany, changed the latter country—as well as Western Europe—from an agricultural exporting to an agricultural importing country. The result was the German Tariff Act of 1879—which was essentially an agrarian protective measure. Bearing in mind that in the first chapter of the discussion of a Middle European Zollverein (1834-1866) the economic basis was manufacturing protection and the common enemy England; while in the second chapter, extending from the latter part of the seventies up to the present time the economic basis is more particularly agrarian protection and the common enemies are primarily the United States and Russia, and secondarily Great Britain with her colonies, let us examine somewhat in detail the literature of our subject. G. de Molinari, editor-in-chief of the “*Journal des Economistes*,” treated, in the February number (1879) of that magazine, the subject of a Middle European Zollverein (Union douanière de l’Europe Centrale). He favored the idea and would have such a union comprise France, Belgium, Holland, Denmark, Germany, Austria-Hungary and Switzerland. There should be free-trade between the members of the Union. The objection that such a measure would destroy a very important source of revenue was answered by his saying that it was well known to specialists that the great bulk of tariff-revenue of the countries of Western Europe was derived from foreign wares and that domestic wares scarcely paid for their cost of collection. Thus nine-tenths of the tariff revenue of France was derived from colonial wares (coffee, sugar, cacao, spices, etc.), while much of the balance was obtained from goods imported from England, Spain, Norway, etc.—countries outside the proposed Union. Similar conditions existed also for Germany. The probability is that such a Union would increase rather than diminish the revenue derived from import duties. De Molinari did not, of course, deny the existence of difficulties in the way of race prejudices and the like, but he did not regard them as insurmountable. Such

a Union was possible as were Unions regarding coinage, postage, weights and measures, telegraphs, etc. For its formation there were four essential points:

1. The agreement on the tariff-rate for the Union. There would be no great difficulty in this owing to similar industrial conditions in the countries composing the Union.

2. The apportionment of the import revenues. This would not be so difficult as it appears. Each country would retain its own tariff administration, the net revenue only being divided and upon the basis, probably, of population.

3. Equalization or apportionment of the consumption or internal revenue taxes. Molinari regarded this as the most difficult problem to be met by the proposed Union, as had been the case in the former German Zollverein. The difficulty lay not so much in the articles taxed—being quite the same in all the states (tobacco, sugar, salt, beer, brandy, etc.) as in the rate and mode of taxation.

4. The formation of an international tariff commission to direct the execution of the new system—similar to the tariff conferences in the German Zollverein.

A reading of de Molinari's article shows that the Union which he contemplated had its model in the German Zollverein. He conceived that a beginning might be made by two or more states with provision for the entrance later of other states. His proposition was discussed on February 5th, 1879, at a meeting of French economists. Leroy-Beaulieu, although in general an advocate of the idea, spoke against the plan of De Molinari, principally because he thought proposition 3—the equalization of taxes on consumption—impossible. France by such a measure would have to replace one milliard indirect by direct taxes. A. Courtois, Ch. M. Limousin and Josef Garnier spoke in favor of the proposition, while Pascal Duprat thought that such a Union applied to the Latin races would be possible. The Chamber of Commerce at Verviers, Belgium, considered the plan and recommended it to the Belgian Federation of Chambers of Commerce, while a committee in

Zürich, composed of industrial and commercial people, recommended a Tariff-Union between Switzerland and France as a basis for a Middle European Zollverein. In Alsace the question was discussed in the press by Bergmann, Lalance and others.

Already, in the latter part of 1878, De Molinari had solicited the opinion of Bismarck on his proposition. The reply of the Chancellor shows very clearly that he did not regard the subject as a question of practical politics although it has been claimed by many that he was favorable to the general plan. In his reply to de Molinari, under date of September 25th, 1878 ("Aktenstücke zur Wirtschaftspolitik des Fürsten Bismarcks," von Poschinger), Bismarck said: "If I were able to obtain a favorable opinion from the Minister of Finance of the smallest nations which I have just cited you—France, Belgium, Holland, Denmark or Switzerland—I would promise to consider the question seriously with you."

In 1879 a pamphlet on this subject—"L'Association douanière de l'Europe Centrale"—appeared under the authorship of R. Kaufmann. Its basis was agrarian rather than industrial protection. To withstand the competition of other countries, especially of the United States, the writer recommended a Middle European Zollverein, comprising the three large states of France, Germany and Austria-Hungary and the three small ones of Belgium, Holland and Switzerland, containing a population of from 125 to 130 million. Many objections of a political, economic, financial, administrative, theoretical or practical nature would, of course, be raised against the scheme, but they were not insurmountable. Politically, it is hardly possible that a Tariff-Union would in any way jeopardize the independence of the individual states. The large ones would offer an equilibrium to one another and at the same time would prevent the absorption of the smaller ones. Such a Union ought to be received favorably by both protectionists and free-traders. Industry would be aided

by an increase in markets and a more effective protection against England. Many difficulties would be encountered in arranging the tariff-rates and they would have to be settled—as all tariff arrangements are settled—by compromises. Such was the case in the German Zollverein. It might happen that some states would derive proportionally less tariff-revenue but this would, if necessary, be equalized by other forms of taxation. Such a Union could only be realized by a gradual development, beginning, perhaps, with commercial treaties among the six countries in which as many acceptable points as possible should be incorporated. The Union would have a moral effect in increasing international good feeling and making wars more difficult. Views similar to those of Kaufmann were expressed by Bergmann, a former member of the German Reichstag, in 1879 in a pamphlet entitled, "Die zukünftigen Zollverträge auf der Grundlage autonomer Tarife der industriellen Länder des Europäischen Kontinents." Dr. A. Peez, member of the Austrian Abgeordnetenhaus, treated, in 1879, the subject of a Tariff-Union between Germany and Austria—"Zollvertrag mit Deutschland, oder wirtschaftliche Autonomie?" This idea had won many adherents but when one examined the question carefully the difficulties appeared to make the plan unlikely of realization. Compared with former years political complications had diminished since the events of 1866. Financial difficulties may be said also to have decreased since the passage of the German Tariff Law of 1879, which increased the consumption taxes. There was also a movement in Germany toward a government monopoly of tobacco. Such measures, of course, decreased the necessity of tariffs for revenue purposes. The condition is quite different when one studies the economic side of the question. The industries of Germany being much better developed than those of Austria, German industrialists might be expected to favor the idea of a commercial Union, while, on the other hand, Austria-Hungary being more agrarian than

Germany might be expected to view the question in the same light, for free-trade between the two countries would mean that Germany would supply her neighbor with manufactured products and receive from her the products of the farm. For reasons apparent the scheme would, on the other hand, meet with opposition from German agrarians and Austrian industrialists. Finally, there was a positive international difficulty. Article XI of the Frankfort Treaty of 1871 between Germany and France guaranteed that they would treat each other forever on the basis of the "most favored nation," in their treaty relations with England, Belgium, Holland, Switzerland, Austria and Russia. Hence a differential treaty such as that contemplated by the advocates of a Zollverein between Germany and Austria could not be effected. It is interesting to note the position at this time taken by Dr. Peez, for we shall find him somewhat later among the most brilliant advocates of the general plan of a Middle European Zollverein.

Guido von Baussern, a Hungarian member of the Reichstag, advocated in many of his speeches a Tariff-Union between Germany and Austria-Hungary (see *Deutschland und Oesterreich-Ungarn. Abhandlungen, Reden und Briefe von Guido von Baussern*. Leipzig, 1890). The motives which prompted him to advocate such a Union were largely political. Political relations would obtain greater solidarity by a cementing of material interests. Von Baussern's ideas are best studied from a memoir which he addressed to Bismarck on February 2, 1880. The only right starting-point leading toward a settlement of the commercial-political questions between Austria-Hungary and Germany is the organization of the nations of Middle Europe into a powerful tariff or commercial Union. The principle of protection and free-trade can work harmoniously together when applied to large territories. A Union of Middle European states would bring together nations which should naturally be united by virtue of their geographical position and economic development. The German

Zollverein realized this in part. Union would decrease costs connected with the raising and administration of the customs. That such a Zollverein would, as in the case of the German Zollverein, lead to political union is not possible. The German Zollverein led to a political union of people of the same race, while the proposed scheme contemplated a union of people of different nationalities. Should such a union so increase the German element as to endanger the political autonomy of the other elements, the latter could easily combine, the result being what it has always been from the time of Alexander the Great to that of Napoleon. The German element is very conservative. It took 60 years to unite a part of its people into the present German Empire and particularism is not yet dead. The realization of this Empire has made possible an economic Union between Germany and Austria, but such a Union should extend to other European states. A development along this line would ensure a greater solidarity of material interests, guarantee peace, strengthen national independence and enable central Europe to become the regulator of the world's trade and commerce. The political rivalry of Austria and Germany in the fifties and sixties alone made an economic Union impossible. Effective rivalry ceased with the results of 1866. Should they now unite they should contemplate the gradual incorporation into the Union of the following additional states: Switzerland, Denmark, Holland and Belgium in Western Europe and the Balkan States in the East.

On March 5, 1880, Bismarck, replying to this memoir, said: "I have noted carefully the contents of your communication and share your view to the extent that I regard such a Tariff-Union between Austria-Hungary and Germany as designating the ideal direction of our commercial relations. I do not know whether we can ever reach this ideal but the nearer we approach it the closer will our commercial and political interests correspond. However, as both countries have lately revised their tariffs any defi-

nite move in this direction is for the present excluded." Dr. Karl Walcker in his work, "Schutz-Zölle, Laissez-faire und Freihandel" (Leipzig, 1880), devoted a chapter to the consideration of a Tariff-Union between Germany and Austria-Hungary. It is unnecessary, he says, to explain to the free-traders and moderate protectionists the enormous economic, political and military advantages which would accrue to Germany from a Tariff-Union with Austria-Hungary. These advantages would be similar to those which Germany derived from the German Zollverein. Among other things it would enable these countries to obtain more easily economic concessions from France, Russia and other countries. Walcker enumerates what he regards as the chief obstacles to the realization of this plan:

1. It would be opposed by a large majority of the German and Austro-Hungarian protectionists, but this opposition could be overcome by a coalition of the free-traders, landlords and the military party.
2. Another obstacle is the Austrian currency confusion and the varieties of consumption customs (Konsumptions-sitten) of the two countries. These obstacles are not, however, insuperable. Even if Austria-Hungary adopted the silver currency, the customs-duties could be levied in gold. Differences in "Konsumptionssitten" exist within the German Empire itself—for example, more coffee per capita is consumed in Saxony and North Germany than in Bavaria—but they form no insurmountable obstacle.
3. Difficulty would arise in the distribution of the revenue. It has been proposed that it should be upon the basis of population, but should this be found inequitable a more equitable basis should be and could be devised.
4. Apparently the strongest argument against a Zollverein is the fact that in Austria-Hungary there exists a state tobacco monopoly and this would probably necessitate a more or less modified form of nationalization of this article of commerce in Germany.
5. It would be necessary to abolish the salt-monopoly

in Austria-Hungary as it would be impossible to inaugurate this system in Germany. As far as the other taxes on consumption—beer, sugar, brandy, etc.—are concerned, they would offer no serious impediment.

The question of the commercial relations between Germany and Austria-Hungary was discussed at the 19th Congress of German Economists (Kongress Deutscher Volks-wirte) held at Berlin on October 21, 22 and 23, 1880. Upon a motion by Dr. Max Weigert (Berlin), seconded by M. Brömel, the following resolution was passed by this organization:

“A Tariff-Union (Zolleinigung) is not admissible,—

“(a) Because it entirely destroys the independence of the individual states of the Union so far as commercial legislation is concerned by making the will of one state dependent upon that of another.

“(b) Because it presupposes a similarity in internal revenue-taxation, which at the present time is neither practical nor desirable for Germany.

“(c) Because by its partial execution, or during an indefinite transition period it would engender exclusive tariff privileges.”

Many took part in the discussion of this resolution. Weigert, the chairman, speaking in favor of it, said that local interests would not be safeguarded by such a Union, that regulations governing its organization must, of necessity, be too artificial and inflexible and hence opposed to the general interests of free-trade, and finally that such a Tariff-Union would be nothing more nor less than a repetition—with its direful results—of the so-called “continental system.” The editor, Hirschberg (Bromberg), opposed the idea of a Tariff-Union because the economic homogeneity, absolutely necessary for such an institution, was lacking. Dr. Wolff (Stettin) regarded such a Union as an illusion which, if persisted in, would endanger the permanence of German unity. The correspondent Brömel (Berlin), in seconding the resolution, said he feared a Tariff-Union

would strengthen protectionism. The Austrian "Industrialists" must not forget that they cannot, without the aid of tariffs, withstand German competition. The German "Industrialists" believe that such a Union will merely make protectionism more permanent. Brömel added that he thought a realization of the proposed plan would jeopardize the very independence of the states by withdrawing or diminishing their power to regulate their own finances. Supposing, for example, one of the states of the Union wanted extraordinary sums of money? Not being able to alter its import duties and perhaps its other forms of indirect taxation it must resort to direct taxation with questionable results. Austria-Hungary is itself a Zollverein. With Germany added it would hardly be a "Dualismus" but rather a "Pluralismus," which is even more unwieldy. Dr. Barth (Bremen) regarded a Tariff-Union as impracticable and emphasized the financial confusion which would ensue were one party at war. Schiff (Berlin) believed that a Union, even if formed, could not be maintained.

The principal advocates of a Tariff-Union at this Congress were Austrians. Baron von Kübeck (Vienna) was among this number. He hoped that the Congress, if it could not recommend a Union, would at least not go on record as opposing it. Dr. Welker (Berlin) regarded with favor a Union based upon free-trade principles or a tariff for revenue only. This he thought would tend to weaken the strong protective walls of neighboring states like France, Russia and even of the United States.

Dr. Hertzka (Vienna) in a similar way favored the plan of a Tariff-Union, believing that its realization would lead to general free-trade. He regarded the point about the "Continental System" made by Dr. Weigert as not well taken, nor had the question of indirect taxes to be brought in. It made no difference to Austria whether Germany had a tobacco monopoly or not. Dr. Dorn (Trieste) spoke in favor of a Union, the line of his argument being similar to that of Dr. Hertzka.

M. Schraut, in his "System der Handelsverträge und der Meistbegünstigung" (Leipzig, 1884), considered from a purely theoretical standpoint the subject of a Tariff-Union between Germany and Austria-Hungary. He did not regard the difficulties in the way of a Union as tariff-political (zollpolitisch) so much as financial and "political." The question of internal revenue-taxation and of the consumptive ability of the people would have to be studied with special care. The statement that should Germany and Austria-Hungary offer reciprocal tariff advantages in forming such a Union, these advantages could be claimed by all states enjoying the most-favored-nation rights, is denied by Schraut, since such a regulation has not the nature of guaranteed tariff and commercial advantages, but represents rather a financial "association-treaty (Associationsvertrag) through which the financial and economic character of the contracting parties is changed. Should such a Union, however, be of an incomplete form, as a common external or transit tariff-regulation it is possible that third states might regard the measure as a commercial arrangement which would justify them in claiming the same advantages by virtue of their "most-favored-nation" rights. Schraut next proceeds to enumerate what he regards as some of the essential points in the proposed Tariff-Union.

(a) The external tariff (Aussenttariff) must be agreed upon and can only be altered through the reciprocal action of the contracting parties either by means of a mutual independent organ or by their regular legislative bodies.

(b) The intermediate tariff (Zwischenzolltariff) must be arranged in organic relation with the external tariff so that the rates will be expressed in the same proportional amounts. If there is to be any flexibility in this arrangement Schraut suggests the plan incorporated in the commercial treaty made between the Zollverein and Austria on February 19, 1853, wherein each state reserved to itself the right to raise the intermediate rate by the amount

which the corresponding external tariff-rate of the other state is lowered.

(c) The external and intermediate tariffs should, in principle, include the majority of objects subject to tariff-duties. The most important exceptions to this rule are, perhaps, the essentially revenue-tariff objects, especially such as are closely related to the domestic taxation and tariffs on articles which affect only slightly the inter-state trade relations.

It is not necessary that the intermediate tariff-rates be the same for both countries. Their determination must take into consideration the various economic, social and political factors involved.

(d) The formation of treaties with other states should be based upon the mutual agreement on this point existing among the parties to the Union.

The International Agrarian Congress, which met at Budapest in 1885, passed the following resolution regarding a Middle European Zollverein: "The state should, during the epoch of its economic transformation, protect its raw production interests by means of tariffs. While a perfected Middle European Zollverein is not practical, it is very desirable that the Middle European states, for the security of their common economic interests, should come to an understanding by which, while not surrendering their right to regulate their own commercial affairs, they may effectively protect themselves against the non-confederated states."

The Hungarian member of the Reichstag, Eugen von Gaal, embodied in his report at this Congress upon the subject of "Agricultural Crises" the idea contained in the above resolution—a commercial-treaty system between Germany and Austria-Hungary and possibly between France and Austria-Hungary, whose characteristic should be an "autonomy" tariff with advanced rates on manufactured and raw materials coming from England, Russia and "countries beyond the sea."

Paul Dehn has treated at some length the subject at hand ("Deutschland nach Osten! III. Oesterreich-Ungarn in Reichsdeutschem Licht. Zweiter Theil: Wirtschaftliche Verhältnisse"). His line of argument is somewhat as follows: Differences in the finances, taxation, money-standards and general internal revenue systems are insuperable and make a pure Zollverein between Germany and Austria-Hungary impossible. A modified Union, however, is practical and for its realization the following suggestions are made:

1. The existing "autonomy" tariff is to be maintained, but Germany and Austria-Hungary should aim to equalize, as much as possible, their tariffs as regards classification, rates, etc. This would tend to strengthen their political and economic relations with each other and, indirectly, with other powers.
2. As corollary to the above and with reference to the future, both empires should agree to ascertain, in a most thorough manner, the foundations (Grundlagen) for a commercial agreement with moderate and equalized tariff-rates.
3. In order to be less hampered in the modification of their tariff-rates for the furthering of their inter-state commercial relations it might be well for both Empires to give the necessary notice for the abrogation of their most-favored-nation agreements with other countries.
4. Since the most-favored-nation regulation between Germany and France (Art. XI of Frankfort Treaty, 1871) relates only to the import, export and transit tariffs and to the reciprocal treatment of their subjects, Germany and Austria can have recourse to advantages outside of this category, such as special railroad concessions and advantages in refining processes and boundary-trade (Eisenbahn-Veredlungs und Grenzverkehr).
5. There should be coupled with any commercial arrangement between the two countries a definite policy as to treaty-relations with third powers.
6. Finally there should be an attempt toward greater

uniformity in certain phases of German and Austro-Hungarian legislation and administration such as Commercial Law, Law of Exchange, Postal-Affairs, Railroad-Legislation, Coinage, Money-Standard, and Internal-Revenue Taxation.

Professor Brentano, in his article "Ueber eine zukünftige Handelspolitik des Deutschen Reiches," which appeared in Schmoller's *Jahrbuch* for 1885, advocated an advance on agricultural import duties sufficient to meet the necessities of German agriculture, at the same time care being taken to provide the industrial interests with additional markets to compensate them for losses sustained by an advance in the price of raw materials. This, Prof. Brentano believed, could be accomplished for Germany through a Tariff-Union with Austria-Hungary and the Balkan States. The twentieth century will know only four or five world-powers—the United States, Great Britain, Russia and perhaps China and France (if her colonial policy proves a success). Germany's only salvation then, if she is to remain a great power, is in a Union such as that suggested above.

A tariff arrangement with moderate tariff-rates for Germany and Austria-Hungary and higher rates for other countries was advocated by the Austrian Chamber of Commerce at Troppau. With the object of furthering this view this chamber addressed a circular note to all the chambers of commerce in the two Empires, inquiring whether they would take part in a Congress called to consider the question. The replies to this letter of inquiry are interesting as showing the trend of public opinion and may be thus summarized: Seven Chambers—5 Austrian (Bozen, Czernowitz, Eger, Görz and Klagenfurt) and 2 German (Munich and Nuremberg)—favored the calling of such a Congress; four German Chambers (Halle, Hildesheim, Regensburg and Stollberg) refused to take part in the proposed Congress. Fifteen Chambers—9 German (Bielefeld, Brunswick, Lauban, Oppeln, Osnabrück, Passau, Plauen, Schweidnitz and Trier), 4 Austrian (Brünn, Innsbruck,

Leoben and Vienna) and 2 Hungarian (Kronstadt and Temesvar)—adopted what might be termed a "waiting attitude," and finally fourteen German Chambers (Barmen, Bochum, Breslau, Bromberg, Cassel, Chemnitz, Köln, Dortmund, Dresden, Duisburg, Hagen, Hanau, Leipzig and Mannheim) opposed any closer commercial understanding with Austria-Hungary. It was proposed to hold this Congress in 1886 but the tenor of the replies did not warrant the execution of the plan.

Carl Mamroth, in his essay "Das Projekt eines Oesterreichisch-deutschen Zollvereins (Hirth's *Annalen des Deutschen Reiches*, 1886), wrote against a Tariff-Union between Germany and Austria-Hungary. His text was taken from a speech made by Schulze-Delitzsch at a congress of German Economists in 1882—"A Zollverein is only practicable between states having no political or economic antagonisms, or rather, stated positively, between states whose political and economic interests are interwoven." Judged by such a text a Tariff-Union between the two states in question is an impossibility. Mamroth next proceeds to enumerate the various antagonisms and concludes as follows: "The project of an Austrian-German Zollverein is calculated, at first glance, to captivate fantastic natures but when the pros and cons are carefully considered its realization appears extremely difficult. The advantages—on the whole—appear very questionable for Germany and are vastly outweighed by the disadvantages."

Dr. Wermert, Secretary of the Chamber of Commerce at Halle, in his "Betrachtungen über einen mitteleuropäischen Zollverein" (Hirth's *Annalen*, 1888), expressed the belief that a Middle European Zollverein—comprising the states of Germany, Austria-Hungary, Switzerland, Denmark, Italy, Holland and the Balkan States, but excluding the "eternal mischief-maker and peace-disturber France"—was necessary to counteract the growing competition of America, England and Russia. Dr. Wermert's plan contemplated free-trade between the members of the

Union and a common tariff applied to the non-members. Such a Union, he thought, would not only strengthen international interests but would also be a peace-guarantee. He reiterated his ideas on this subject in 1894 in a work entitled "Pro Memoria: Betrachtungen über die Agrarische auf den Handelsstand und die Handelspolitik der Reichsregierung" (Halle, Kaemmerer & Co.).

Count Paul de Leusse argued, from the agrarian standpoint, in favor of a Franco-German Zollverein in his pamphlets "La paix par l'union douanière franco-allemande" (Strassburg, 1888) and "Union douanière agricole du centre de l'Europe" (Paris, 1890). Central Europe is threatened with agricultural ruin. The realization of this would mean industrial decadence, depopulation and bankruptcy. To avert such an evil an economic Union between Germany and France is a necessity. The force of events will gradually attract to this Union Belgium, Switzerland, Holland, Austria-Hungary and possibly Italy and Spain. The basis for the Union must be agrarian protection although this does not necessarily exclude the protection of other articles. The tariff-rates must be variable, changing according to the price of the commodities paying the duty. De Leusse recommended the establishment of a Tariff Bureau (Zollamt) in some central place like Frankfurt, composed of representatives of all the states of the Union, whose power should be advisory and whose responsibility should be to their respective governments.

We have found that Dr. Peez in 1879 (page 10) was numbered among the opponents of a Tariff-Union between Germany and Austria-Hungary. By 1885 (*Münchener Allgemeine Zeitung*, No. 129) he had changed his point of view and in March, 1889, at a meeting of Austrian economists at Vienna, he still further elaborated his ideas. His line of argument was in the following strain. Great Britain, Russia and the United States are bent upon becoming enormous commercial territories (Handelsgebiete). The full realization of their efforts means the development of three world-powers (Weltmächte), viz.:

(a) Great Britain with her colonies and dependencies comprising 17 per cent of the earth's surface or 23,000,000 square kilometers, and 21 per cent of the total population of the world or 313,000,000.

(b) The Russian Empire with 16 per cent of the earth's surface or 22,000,000 square meters, and 7 per cent of the world's population or 105,000,000.

(c) America with 22 per cent of the earth's surface or 30 million square kilometers and 7 per cent of the world's population or 108,000,000. This development means the gradual deterioration or absorption of the countries of middle and western Europe unless there be some counter-acting influence. The salvation of these countries rests in the formation of a Middle European Zollverein comprising the states of Germany, Austria-Hungary and Italy. France, out of hatred for Germany, might possibly enter into closer economic relations with Russia—a procedure admissible so far as Article XI of the Frankfort Treaty is concerned.

An interesting observation—indirectly referring to our subject—was made by Professor Fuch (Strassburg) in reviewing Professor Patten's work—“The Economic Basis of Protection” (Philadelphia, 1890). Commenting upon the economic isolation of the United States, not only as recommended in Patten's book but as “actually existing in practice,” he said: “Europe will do well to reckon, in the near future, with this economic isolation of the United States and to frame its legislation to meet it” (Schmoller's *Jahrbuch*, Vol. XV, p. 294).

A very important work on the tariff-relations between Germany and Austria-Hungary—which has been often consulted in the preparation of this essay—appeared in 1891 under the authorship of Dr. Alexander von Matlevkovits, an Hungarian member of the Reichstag (“Die Zollpolitik der Oesterreichisch-Ungarischen Monarchie und des Deutschen Reiches seit 1868 und deren nächste Zukunft”). So far as relates to the subject in hand Matlevkovits' idea was a Zollverein between the two Empires

whose general principle should be a common tariff applied to foreign countries and inter-state free-trade. To this latter principle, however, exceptions should be made to meet economic and political differences (especially as regards articles operated by one of the states, as a monopoly). Each state should have a free hand in the administration of its tariff but government officers of the one state should at all times be allowed to inspect the system in the other state. The tariff-revenue should be divided between Germany and Austria-Hungary at the ratio of 4 to 1; should, however, the revenue derived from grain and wood not reach a certain definite amount the ratio for these two commodities is to be 7 to 3. Each country should pay its own cost for tariff administration. Provisional reports should be rendered quarterly and definite settlements concluded yearly. Both states should attempt to similarize their tariff-administration. To aid the process of economic unification a "Unionrat" composed of 12 members, 6 from each state, and having advisory power, should be appointed. In matters of internal taxation and trade neither party should discriminate against the other, and there should be reciprocal protection in trade-marks and railroad rates. Provision is made for the admission, in the future, of other states and for a common commercial treaty applied to foreign countries. The treaty, embodying the scheme of Matlekovitz, should, according to its author, come into force on January 1st, 1892, and, if notice of its abrogation be not given before January 1st, 1901, should continue in force 10 years longer. Prof. Schmoller, in reviewing this work of Matlekovitz in his *Jahrbuch* (Vol. XV, p. 275 et seq.), expresses his sympathy for the general idea of a Middle European Zollverein but regrets that the author's "standpoint is somewhat one-sided: in the first place he is an Hungarian; in the second place, a free-trader of the sixties, and in the third place, a public officer (Beamter)."

About the time we are now considering there appeared a

brilliantly written pamphlet under the title "Die Zukunft der Völker von Mitteleuropa." The author's name was not attached to this essay. There was an attractiveness in the style and a thoroughness in the portrayal of political and economic conditions which caused it to be widely read and much commented upon. Some went so far as to claim that it was either written by the Chancellor himself (Caprivi) or by some one in sympathy with his ideas (see Prof. Farnam in "Yale Review" of May, 1892), and was therefore supposed by some to give a possible trend to the German and Austro-Hungarian commercial treaty which was soon to be renewed. It might be added, in passing, that, so far as the writer of this article is informed, Caprivi never expressed himself in favor of a Zollverein between the two Empires. Furthermore the writer happens to know the real author of the pamphlet in question and can therefore state that he is not Caprivi. The fact is emphasized in the work that the states of Central Europe were becoming more and more dependent upon foreign countries for their food supply. This economic development threatens not only the prosperity but also the civilization of these states. The author is somewhat anti-American in his sentiments. As regards our tariff policy he observes that "a calm reflection leads to the belief that the American effort to gain complete emancipation from European civilization and from its products will, sooner or later, be crowned with success." He advocates a European Tariff-Union composed primarily of Germany, Austria-Hungary, Italy and France, to which may possibly be added the smaller states of Switzerland, Belgium, Holland, Norway and Sweden.

We come now to a period in our discussion, during which certain political measures, particularly in the United States, have given more of an anti-American political trend to the subject of a European Zollverein. The most important of these measures are the McKinley Tariff Act of 1890; the Wilson Bill, particularly the sugar schedule, by which

Germany believed that her most-favored-nation rights had been violated; and the Dingley Bill. This legislation has been economically hostile to German industrial interests by the difficulties imposed upon the importation into the United States of goods made in Germany, and has given strength to the "anti-American trend."

As regards Germany, the tariff act of 1879 was, in principle, agrarian protection. The assurances then made as to the maintenance of the price of wheat were not made good, although in 1885 the grain tariff was tripled and in 1887 increased fivefold. In Germany's Commercial Treaty of 1892 with Austria-Hungary these rates were somewhat lowered and the factor of stability, or rather inflexibility, introduced by the agreement that the treaties must continue unchanged for 12 years, or, more correctly, that rates should not be raised above a certain point during this period. This measure may thus be regarded as a slight reaction favorable to the industrial classes.

During the agitation of this bill those favorable to a Middle European Zollverein were inclined to look upon the measure as a definite step in this direction and were further inclined to represent the Government as sharing this view. Later events proved this belief to have had its foundation in fiction rather than in fact. In the "Yale Review" of May, 1892, Prof. Farnam, speaking of the general subject of a Zollverein but more in particular regarding the recent treaty, said: "There is, undoubtedly, a considerable literary movement in favor of this policy (that is, the policy of a Middle European Zollverein), but when we look at the facts they are not very encouraging." The facts referred to by Prof. Farnam are that Germany, after concluding her commercial treaty with Austria-Hungary, made similar treaties with three other European states and then extended the advantages of these reductions to no less than 30 other states, including the United States, by virtue of her most-favored-nation agreement—facts not very encouraging to those who looked upon the treaty of 1892 as the basis for a Middle European Zollverein.

Prof. Werner Sombart, in an article in Schmoller's *Jahrbuch* (Vol. XVI, 1892) on Germany's new commercial treaties ("Die neuen Handelsverträge, insbesondere Deutschland"), comes to the conclusion that nothing is more foolish than the idea advanced by some that these treaties were a step in the direction of a Middle European Zollverein. Such a plan is not possible to realize, at least not inside of a few hundred years. "He who understands in a most superficial manner the commercial-political development of the European states will regard it as entirely out of the question that, within a conceivable time, tariff modifications among these different countries can be radically lowered."

Finally and officially, it was stated by Secretary of State Von Marshall, in his speech in the Reichstag on May 3rd, 1897, in reply to the interpellation of Count Kanitz on the "Saratoga Agreement," that "the Confederated Governments, when they negotiated the commercial treaty with Austria-Hungary in 1891, did not doubt a moment but that they were under obligation to concede to the United States the tariff reductions which were granted Austria-Hungary. It would have been an infringement upon good faith to have denied this legal obligation after we had repeatedly asked for similar favors to be granted us."

In 1895 an interesting and instructive work on modern commercial politics ("Zur neuesten Handelspolitik") by Dr. Peez appeared. Its central idea was that of a Middle European Zollverein. He and Matlekowitz stand on similar ground except that his plan is somewhat more extensive than the latter's—making the entrance of France into the Union a *sine qua non*. He also appears to be considerably irritated by the high tariff-rates of the McKinley Bill. Without Union he seems to regard Middle and Western Europe at the mercy of the "Foreign Policy" of Great Britain and the "Commercial Policy" of the United States. He tells us that soon after the passage of the American Tariff Act of 1890 an article appeared in the

French "Journal des Débats," the writer of which regarded a tariff war between Europe and the United States as unavoidable and advised not only France, but Europe in general, to take immediate action. American pork, lard, petroleum and grain imported into Europe ought to be compelled to pay as high an import duty as European products sent to the United States. Similarly we are told that Burdeau, a member of the French Chamber of Deputies, in addressing his constituents at Lyons, declared that the United States should be treated as she treated others. He suggested that France should buy her petroleum of Russia and her grain of Austria-Hungary. The "Temps" regarded it as not improbable that the triumph of the prohibitive tendencies in the United States might lead to an abolition of the tariff barriers between European countries "as Colbert had abolished the customs barriers between the provinces." Finally, Peez, who devotes considerable attention to French public opinion on American tariff legislation, tells us that Lockroy, a former French Minister of Commerce, while speaking against any anti-American combinations in Europe, said: "Let us content ourselves with judicious tariff duties against American pork and we shall then be able to obtain desired advantages from America."

Prof. Schmoller, in his *Jahrbuch* of 1895 (pp. 1049-1053), in reviewing Peez's work, speaks of the author as an "expert of the first rank." His criticism has the double value of being an excellent analysis of the economic side of Peez's work and at the same time of giving us a picture of his own view, which he shows no disposition to conceal. The basis of Peez's work, he tells us, is the relation of the Middle European states to England, Russia and the United States. The last two seek by means of high tariffs—England (to use Prof. Schmoller's words) "by means of its selfish intriguing commercial supremacy (egoistische ränkevolle Handelsherrschaft)" and her colonial policy—to place in jeopardy the economic interests of the smaller

states. The average ad valorem tariff-rates (statistics for 1892-93) in the United States is 29.1 per cent, in Russia 27.8 per cent, in Italy 17.9 per cent, in Sweden 11.4 per cent, in Denmark 10.9 per cent, in Norway 10.6 per cent, in France 10.2 per cent, in Germany 9.2 per cent, in Roumania 7.7 per cent, in Austria-Hungary 7 per cent, in Great Britain 4.9 per cent, in Switzerland 3.9 per cent, in Belgium 1.8 per cent, and in Holland .5 per cent. In Russia and the United States tariff-rates vary from 60 to 300 per cent. They compel the rest of the world to buy their raw material but refuse, in return, to purchase foreign manufactured products. Taking the Russian estimates for 1888 and those of the United States for the fiscal year 1888-1889 the following statistical table tells the story (value in marks).

	Imports from Europe.	Exports to Europe.
Russia - - - - -	918,400,000	2,378,000,000
United States - - -	1,613,600,000	2,288,700,000
	<hr/> 2,532,000,000	<hr/> 4,666,700,000

That is to say, these two countries exported nearly 2,100,000,000 more marks worth of goods to Europe than they imported therefrom. Although Russia lately made treaties with Germany and Austria-Hungary, this fact does not materially alter conditions, and besides tariff-arrangements are only a part of the Russian commercial policy. The Siberian and other railroads, and the development of the cotton, petroleum and other industries in Russia are placing the other countries of Europe, relatively speaking, at an increasing industrial disadvantage to her. Similar economic changes are taking place in the United States, while England, comprising only 10.6 per cent of the population of Europe and only 3.2 per cent of its surface, produces from 50 to 70 per cent of all the materials manufactured in Europe. Although in late years this island has proclaimed the policy that she desires no additional colonies, she has in the last 20 years practically annexed 4,500,000 square miles of land. From the beginning of

the century England furnished Continental Europe with manufactured products, taking in exchange their raw products. Since 1875, however, the latter has been supplied by the United States. Peez therefore comes to the conclusion that the German protective policy from 1878 to 1887 was a necessity, a view which is shared by Prof. Schmoller ("wie ich glaube ganz mit Recht").

The latter concludes his review in about the following words, which shows us very plainly his point of view upon the subject of an European Zollverein: The importance of the treaty of 1892 does not lie, so he tells us, in the reciprocal concessions which, for the present, are not great, but in the removal of the dreaded tariff war and in the establishment of an economic community of interests (Wirtschaftsgemeinschaften) which, in many particulars can be further developed even if we cannot, at present, have differential tariffs and a Zollverein. The three "world-powers"—Great Britain, United States and Russia—have the greatest interest in maintaining and increasing the commercial antithesis among the Middle European states. Our aim must be to minimize this antithesis and, where our interests coincide, to unite—as for example in common measures against the spread of cattle disease and in railroad conventions.

In 1896 an International Agrarian Congress was held at Budapest, at which prominent agrarians—landed proprietors, editors, writers, economists, ministers of agriculture and others were present. The proceedings of this Congress were printed and appeared the year following in two large volumes (*Congrès International D'Agriculture*). "Memoires" and "replies" to questions previously sent to prominent "Agrarians" and others are collected in Vol. I, while the second volume contains the debates of the Congress.

Among the questions considered were the following ("Section III (a) Douanes, 3"):

"In view of the existing international situation is it

desirable that certain states establish among themselves closer economic bonds?

“What would be the industrial consequences of such an economic Union?”

Of 49 who expressed themselves upon this subject, 14 were Hungarians, 8 were Austrians, 8 were German, 5 were French, while 14 represented other European countries. Twenty-nine spoke more or less in favor of the Union, 14 opposed it, while 6 might be classified as neutral or doubtful. Among the Hungarians 10 were favorable to the Union and 4 against it. All the Austrian, 6 Germans and 2 Frenchmen were in favor of a Union, 3 Frenchmen were against it and 2 Germans were neutral. Of the remainder 3 were for a Union, 7 were against it and 4 were neutral. It must not be presumed that among those classified as “favorable” to a Union, all contemplated the same kind of an agreement or the same degree of unification. A reading of the proceedings of this Congress reveals the fact that the question was largely argued from the standpoint of class interests, a smaller number basing their observations upon the broader principles of common weal. The central thought was, naturally, agricultural protection.

It seems hardly profitable to go too much into detail regarding this Congress but perhaps the observations upon the subject of a Middle European Zollverein made by a few of the most prominent members, may not be out of place.

According to Géza von Gerlóczy (Professor at the Royal Agricultural Institute at Kassa, Hungary), a closer economic Union among the states of Central Europe would tend to weaken the present agricultural crisis.

Hugo H. Hitschmann, editor-in-chief of the “Wiener Landwirtschaftliche Zeitung,” thought the Union desirable because of the protection it would give to agricultural interests—a view shared by André de Llaurado, Inspector-General of Forests, from Barcelona. For more general

reasons the Union was advocated by Dr. von Jureschek, Aulic Councillor to the Austrian Central Statistical Commission, and Professor at the University of Vienna, who thought the plan should include the states of Germany, Austria-Hungary, Italy and eventually Switzerland, Denmark, and the Balkan States.

Dr. W. Lexis, Professor of Economics at the University at Göttingen, and one of the best German writers on commercial questions, was of the opinion that "a European Zollverein—at least between Germany and Austria-Hungary—would be a very desirable thing, but the diversity of agricultural and industrial interests—say nothing of the political differences—makes such a project almost impossible of realization."

Dr. W. E. Martin of Melbourne (Secretary of Agriculture) begged the question by stating that it depended upon the political opinion of a person—"a free-trader naturally looking at the project in a different light from a protectionist."

Henry Sagnier, editor-in-chief of the "Journal de l'Agriculture" at Paris, stated that such a Union was conceivable between states whose economic interests are absolutely common but that such not being the actual situation in Europe a Union at the time was not to be thought of.

The Marquis de Vogué, President of the Agricultural Society of France, made the statement that such a Union responded so little to the actual economic and political situation of Europe, and its chances of realization appeared so slight, that he thought it useless to consider it.

The two delegates from Russia, Kovalesky (Director of the Department of Commerce and Manufactures) and Kasperow (Chief of the Section of Cereals), in a "Mémoire sur les questions du Programme du Congrès," concluded that "the maintenance of customs-laws, be it in the simple form or be it in the complicated form of Tariff-Unions, ought to be declared as contravening universal progress." This seems a good deal for delegates coming from per-

haps the most protectionistic of the civilized states to say. What they had, no doubt, uppermost in mind was a Tariff-Union among the Middle European states which would operate very disadvantageously against Russian agricultural interests.

Among the delegates who took part in this Congress were M. de Molinari, Dr. von Matlekovitz and Prof. Schmoller. The latter suggested that possibly in 1902, when the present commercial treaties would expire, an experiment in the direction of a Tariff-Union might be made with grain, cattle and perhaps other wares among the states of Germany, Austria-Hungary, Italy, Switzerland and possibly France, Belgium and Holland. "I admit," says Prof. Schmoller, "that the Union—like all things great and new—is not easy to accomplish. Great statesmen with a wise and energetic policy are necessary."

Louis Strauss, Vice-President of the Superior Council for Industry and Commerce of Belgium, expressed himself at this Congress as follows: "A Tariff-Union of the states of Central Europe is evidently a dream. The difficulties opposed to its realization are much greater than when de Molinari (1878-79), inspired by a desire to fortify the solidarity of the nations involved, proclaimed this beautiful and generous idea."

The Agrarian Von Ploetz, member of the German Reichstag and Prussian Landtag and first President of the "Bund der Landwirthe," while agreeing in general with Professor Schmoller's remarks, styled his proposition to wait until 1902 as "music of the future" (Zukunfts-musik). Why should we wait six years before taking action, he asked. Three points were regarded by him as essential for the realization of a Tariff-Union, viz.:

- (1) The re-establishment of the value of silver.
- (2) Prohibition of dealings in futures in grain (already accomplished in spring of 1896).
- (3) Abrogation of the most-favored-nation clause with non-Central European states.

In view of the proceedings of the Congress above described, coupled with the fact that the Landwirthschaftsgesellschaft at its General Assembly at Vienna on September 1st, 1896, passed resolutions favoring a Middle European Zollverein, it seems a rather questionable statement when the "Deutsche Agrarzeitung" (September 18, 1898) says that neither at the Agrarian Congress in Budapest nor at the one held at Vienna did any "agrarian, German or otherwise ever propose or favor a European Tariff-Union such as that of the old German Zollverein. Only by the free-traders at Budapest was such a proposition made but it was rejected by the agrarians of all countries."

Political and economic events in 1897 seemed to conspire to bring almost to a focus German, and, in fact, general European, hostility to the United States. The Dingley Bill, with its high import duties on manufactured products, coupled with the clause whereby bounty-fed goods had to pay additional duties equal to the amount of the direct or indirect bounty paid, was the important political "event" which antagonized especially the industrial classes whose interests were adversely affected by the measure.

The important economic "event" was the coincidence of good harvests in the United States and poor ones in Europe, which caused enormous exportation from the United States to Europe not only of grain but of other food products, particularly meat. Such conditions were not conducive to soothing the increasing bad humor of the agrarians. The question of a tariff war or some sort of a European tariff combination against the United States was transferred from the realm of theoretical political economy almost to that of practical politics. The press nauseated itself with unkind statements about America. It was this condition of things, coupled with a "Germanic" consciousness of the possible or probable future economic and political preponderance of the United States as a "world power" which explains, in a large degree the anti-

American tenor of the German press during the war between the United States and Spain.

Even before the Dingley Bill was enacted, but after its passage became a foregone conclusion, the question of Germany's most-favored-nation rights with the United States was made the subject of an interpellation in the Reichstag (May 3rd, 1897), by the Agrarian leader, Count Kanitz. After emphasizing the common interests of agriculture and industry against the "unreasonable" tariff legislation of the United States, he said: "If we are to arrive at some effective measures it will be desirable to go hand-in-hand, if possible, with other European powers, and I am happy to say there is some prospect that this may be done. In all of the European states there is a strong reaction against this new advancement of the American tariff-policy. The governments have made protests through their diplomatic representatives at Washington. Even in industrial circles the movement is beginning. The sharpest protest was made by the industrialists of Austria. They have lodged with their government the direct request for a combination of the European states for the purpose of adopting uniform counter-measures. I consider the proposition worthy of a closer consideration." It appears, as voiced in the reply of Secretary of State von Marshall, that the government did not share this view of Count Kanitz. "To do all," said von Marshall, "which Count Kanitz has, at the present time, suggested would be the greatest mistake and the greatest sin toward the interests of those whose protection and welfare is placed in the hands of the confederated governments."

In commenting upon a debate in the Bavarian Diet at Munich on October 21st and 22nd, 1897, wherein the abolition of the most-favored-nation arrangement with the United States had been recommended, the morning edition of the *Kreuzzeitung* (October 23) expressed the hope that an agreement might soon be made by Germany with France and other important countries, such as Austria-Hungary, Italy and Spain, to act conjointly against the United States.

On November 20th, 1897, Count Goluchowski, Minister of Foreign Affairs of the Empire of Austria-Hungary, in an address to the Hungarian Committee of Foreign Relations recommended a European combination against "the countries beyond the sea," meaning of course primarily the United States.

The high political position of the speaker naturally gave an official character to his statements and excited universal comment. It therefore appears proper to quote somewhat in detail from his speech which has been kindly furnished the writer by Charles V. Herdliska, Esq., United States Chargé d'Affaires ad interim at Vienna (see *Fremdenblatt* of November 21, 1897).

"The disastrous war of competition which we meet with at every step and in every field of human activity upon the part of the countries beyond the sea—a contest which is not only now going on but which will become greater in the near future—calls," says Count Goluchowski, "for an immediate and comprehensive resistance unless the nations of Europe are to be seriously crippled in their most vital interests and are willing to fall victim to a disease which will surely lead to their destruction. They must fight shoulder to shoulder against this common danger and they must go into this contest armed with every weapon of defense which their resources can afford. This is a great and heavy task and, unless all signs fail, it will impress its character upon the epoch of history into which we are now entering.

"As the 16th and 17th centuries were filled with religious wars; as in the 18th century liberal thought made a way for itself to the fore; as the present century has been characterized by the development of national questions; so the 20th century promises to be in Europe a struggle for existence in the politico-economical field, and *European nations must unite* in order to contend successfully in defending the conditions upon which depend their power to live.

"I trust that the realization of this may become general

and that we may be permitted to employ the time of peace, to which we all now confidently look forward, in gathering our strength and turning it resolutely in that direction."

The "Neue Preussische Zeitung" (Kreuzzeitung), commenting upon this speech of Count Goluchowski, under date of November 25th, 1897, stated that it was reported that Spain had consented to take part in any movement contemplating a European combination against American tariff legislation. This paper further stated that the Italian Minister-President Rudini had said that should the United States persist in raising its tariff the European countries must take steps to counteract this evil. The French Minister of Commerce, according to the same authority, had expressed himself similarly. This paper seemed to regard Goluchowski's speech as a warning to Europe (Wahn Ruf an Europa).

On June 13th, 1898, there appeared in a social democratic magazine a very well written article by Richard Calwer (recently elected a member of the German Reichstag), entitled "Die Vorbereitung neuer Handelsverträge," in which the writer affirmed that should international competition be excluded by high protective walls to the countries of Middle and Western Europe it would cause, because of the smallness of the markets, a weakening of their productive capacity. Industrial stagnation would ensue and this would have its effect upon wages and general consumption. With high tariff walls applied to enormous territories like the United States, Russia or Great Britain with her colonies the opposite effects would take place. "The most rabid (linksstehendste) free-traders will admit," said Calwer, "that the present procedure of America makes further encouragement of her imports into Europe an impossibility."

In order to obtain advantages enjoyed by large countries, Europe must unite. Such a Union would place her in a position to obtain concessions as well as give them.

The editors of "Die neue Zeit," in a footnote to this

article, take pains to show their disapproval of the position taken by its writer. Their argument runs as follows: The rabid free-traders are by no means the only ones who recognize that no further concessions to America are possible. If a Middle European Zollverein means a move in the direction of doing away with the tariffs which hamper the countries of Europe, then it should be hailed with joy. If it means, however, protectionism and tariff-wars (which would probably be encouraged by such a Union), then we are opposed to it. In any case there is no likelihood of its realization. The truth is that such a Union means nothing more than agrarianism and protectionism extended to Middle Europe. It is foolish to argue that England will, in the near future, go over to protectionism. This policy in the United States and Russia would principally make such a Union necessary—if necessary at all. Russia is no copy for us but the American people in their opposition to monopolies are more free-traders in sympathy. We Social Democrats do not want to antagonize this sympathy by such a Zollverein. This view of the editors may be regarded as the social democratic standpoint since it corresponds to the utterances of nearly all the prominent Social Democrats as voiced in their Parteitag at Stuttgart on October 6th, 7th and 8th, 1898.

Volume II of the “Schriften der Centralstelle für Vorberitung von Handelsverträgen”—an organization whose aim is to promote the industrial rather than the agrarian interests of Germany—deals with the commercial relations between Germany and the United States. The author, Prof. von Waltershausen, after demonstrating that in a tariff-war with the United States Germany would be worsted, comes to the conclusion that the countries of Middle and Western Europe must come to a common understanding regarding their economic relations with the United States. Prof. von Waltershausen does not contemplate a European Tariff-Union modeled after that of the old German Zollverein. His idea is that the individual

members of the Union—which might begin with the countries comprising the Triple Alliance, but should eventually include practically all the states of Central and Western Continental Europe—should agree to form no commercial treaty which was not essentially applicable to all members. Should America not come to terms the combined action of all members of the Union would make a tariff-war much more advisable and might be inaugurated by prohibitive import duties on American tobacco, meats, lard, wheat, and a differential tariff on American cotton and products of the mine.

As a basis for his plan, the following points are recommended by Von Waltershausen:

1. Any agreement must last 10 years.
2. The present German tariff-rates are to be applied to American goods imported into the Union.
3. The tariff-rates in the Wilson Bill are to be applied to goods imported into the United States from the countries of the Union.
4. The most-favored-nation clause is to be abolished. This would allow greater freedom to the members of the Union to make such special tariff arrangements with other states as do not conflict with the regulations between the Union and the United States.

Such a proposition as the above, appearing under the auspices of an organization devoted to the German industrial interests, might be regarded as significant were it not for the fact that the book was prefaced with the following words from the director of the organization: "We do not agree with the personal views of the author in all points; this applies especially to the final proposition advanced by him."

The next publication of this society is a work entitled "Die Politik der Handelsverträge," under the authorship of its Director, Dr. Vosberg-Rekow. He speaks of the plan of a Middle European Zollverein as "an idea advanced by a large number of theorists," which might seem

to indicate that so far as industrialists are concerned the matter is more a question of "theory" than of "practice."

In a September number of the "Economist Français" there was an article from the pen of the eminent French economist, Paul Leroy-Beaulieu, on the subject of a European Federation. The Czar's disarmament proposal might be realized under certain conditions, viz.: Germany's willingness to transfer to France, for an indemnity, Lorraine, leaving Alsace to constitute itself into a small neutral state guaranteed by the Powers or to join Switzerland, of which it would form two cantons, while still remaining a part of the German Zollverein. Such a plan, by removing the cause of friction between Germany and France would make possible the realization of a European Federation whose objects should be (1) to proclaim a "Monroe Doctrine for Europe"—a prohibition against any territorial establishment on the part of a non-European Power (meaning, of course, the United States) on the continents of Europe, Africa and that part of Asia bordering upon the Mediterranean sea; and (2) an alliance among the European powers to help one another with armed force in the Far East and in the Pacific.

Leroy-Beaulieu recommended also that this federation against the United States should not only be political but also economic, and that the states of Europe should allow each other a preferential customs tariff. "If," concludes the writer, "Europe does not want to abdicate in favor of its new competitors it must make up its mind to constitute itself on new lines."

"Die Grenzboten" of September 22nd, 1898, commenting upon this scheme of Leroy-Beaulieu, regarded it under present conditions, as hardly worthy of discussion. This paper, which is free-trade in its tendencies, further observes that protectionism applied on such a large scale would be more objectionable than when applied, as at present, to small individual states. Such a Tariff-Union would bring about a greater tension between the states

of Continental Europe and the three great powers of the United States, Great Britain and Russia, with results more disadvantageous to the former.

Subsequently (September, 1898) an Agrarian Congress was held at Vienna. There was no recommendation of a Middle European Zollverein but considerable attention was given to the plan of the German and Austrian agrarians advocating united action for obtaining grain-tariffs which would practically prohibit importations from the United States. The eminent economist, Prof. Adolf Wagner, in reply to a letter of the writer, asking his opinion, for purposes of publication, on the subject of a Middle European Zollverein, expresses his sympathy for the movement, emphasizing, however, that he fully appreciated the many difficulties connected with its realization—difficulties which he regarded as political rather than economic. France he regarded as the great stumbling block in the way of the movement but the boundlessly selfish ("masslose egoistische") commercial policy of the United States, Russia and Great Britain will compel a gradual coöperation of the countries of Middle and Western Europe in order to obtain from these powers proper commercial concessions. As expressed in a conversation with the writer, Prof. Sering, who is cited by permission, may be said to hold similar views.

On October 7, 1898, Prof. H. H. Powers, then of Leland Stanford University, addressed a circular letter to several secretaries of German Chambers of Commerce, editors and economists, asking their opinion, for purposes of publication, on the plan of a Middle or Western European Zollverein. Professor Powers has kindly allowed the writer to make citations from their replies.

Dr. Gensel, Secretary of the Chamber of Commerce at Leipzig, believed that, owing to present protective tendencies and inter-state mistrust and envy, the realization of a Tariff-Union between Germany and Austria-Hungary or between Germany and Western Europe in general, was a

question of the far distant future. "This opinion," he added, "is also shared, so far as I know, by our trading classes (Handelsstande)."

The "Syndikus" of the Chamber of Commerce at Frankfort is unable to answer the question as his Chamber as well as most other German Chambers has taken no position on the question.

The "Secretary" at Königsberg regards a Tariff-Union as an illusion (Traumbild), because of (1) the diversity of interests among the states which should compose the Union, and (2) impossibility of equitable ratio for a division of the rates. "The example of the German Zollverein is not to the point because this Verein comprised a single—although somewhat disunited—people, that had never lost its feeling of unity, and because the German Zollverein was also simply the harbinger of the German Empire."

The "Syndikus" of the Chamber of Commerce at Aix-la-Chapelle is favorable to a Tariff-Union between Germany, Austria-Hungary and Italy. He recognized the difficulties in the way and expressed doubts whether they could be at present overcome. It may be a practical question of the future—perhaps of the middle of the next century, especially if "Imperial Federation (i. e., in Great Britain) is realized."

The Secretary of the Chamber at Stuttgart expressed his position in the following words: "An international Zollverein, however plausible and sympathetic the idea may be, is a Utopia whose realization is growing constantly more difficult."

The semi-official organ, "Kölnische Zeitung," does not regard a Tariff-Union as possible. The various states which should comprise such a Union are more or less unfriendly to one another. "How is a Union, then, possible?"

The "Syndikus" of the Chamber of Commerce at Bremen, refuses to express an opinion on the subject and has "no interest in the matter," while the editor of the

“Schlessische Zeitung” believes that the difficulties in the way of the realization of a Union would probably be too great to overcome.

Prof. Rathgen (Marburg) stated that theoretically such a Tariff-Union ought to embrace all European states excepting Russia, England and (for political reasons) Turkey. Even an optimist, however, would not regard such a scheme as possible. Greece, Spain and Portugal would add no value to such a Union, while France's political antipathy would exclude her. The beginning would have to be made with Germany, Austria-Hungary and possibly Italy, while the smaller states of Europe would, by degrees, be added. There would be many advantages as well as disadvantages from the proposed Zollverein. The probability of its realization is not, for the present, very great, as no great class, as a unit, supports it. The strongest interests favoring a Union are the agrarian. It will be the birth of necessity and will come to pass, if at all, through the development of industry in the United States or through the realization of non-European-Continental Zollvereins, namely, Pan-Americanism and Imperial Federation.

We have now reached the end of our task—an attempt to portray European, or rather German, public opinion upon the subject of a Middle European Zollverein. It has been found that the discussion, so far as the present century is concerned, divides itself into two periods. The first extended from 1834, when the German Zollverein came into existence, to 1866. The states contemplated as members of a Middle European Zollverein, during this period, were those of Germany and Austria. The underlying economic idea was industrial protection against the common enemy, England. The political “idea” was the struggle between Prussia and Austria for German hegemony. The economic crisis happened in the early sixties when the question was presented to the members of the Zollverein whether they should enter into new treaty relations with

France and Western Europe, contemplating tariff modifications in the direction of free-trade, or with Austria, the result of which would have been a strengthening of the bonds of protection. The question was solved by Bismarck's adoption of the former plan. The political crisis came in 1866 and was decided favorably to Prussia at Königgrätz. The new birth was the North German Confederation and later the German Empire.

The second period began in the latter part of the seventies when, owing to the industrial revolution in Germany, cheapened means of transportation and the development of American agriculture, causes which changed Germany from a food-exporting to a food-importing country, the "Fatherland" embarked upon a system of agrarian protection which reached its high-water mark in 1887, while the German commercial treaties inaugurated in 1892 registered a slight reaction favorable to the ever-increasing power of the industrial classes. Economic conditions in the United States have been an important factor in antagonizing German, or rather European, interests, while economic legislation has had a similar effect upon large industrial classes. This antagonism has expressed itself in recommendations of some sort of an economic combination or European Zollverein which should include most of the countries of Middle and Western Europe. The underlying economic "idea" may therefore be said to be primarily agrarian protection against the common enemy, the food-exporting countries, especially the United States.

Our study of the question has shown that no great class has, as a unit, definitely advocated a Middle European Zollverein as a political program. The proposition of some sort of a European Tariff-Union has been advocated in a more or less modified form by the following:

1. A large number of important European, but more particularly German, economists.
2. A large number of Hungarian and Austrian agrarians, while the majority of German agrarians oppose the plan, although perhaps somewhat less vigorously than formerly.

3. Some German industrialists, while Austrian industrialists, almost as a unit, oppose it.

4. Secretaries of boards of trade, journalists and politicians have, in considerable number and for various motives, favored the plan.

The natural conclusion from the foregoing exposition is that, while a European understanding upon some definite subject which might separate their interests as a class, from those of one or more other countries, is not an impossibility, the political prejudices and diversity of economic interests excludes from the domain of practical politics the proposition of a Middle European Zollverein as contemplated by the majority of writers above cited.

An American economist, Professor H. H. Powers, in a recent article in the "Annals of the American Academy," entitled "The War as a Suggestion of Manifest Destiny," said: "It is probable that a generation more will see the entire world under the jurisdiction or within the 'sphere of influence' of half a dozen Powers who will continue the struggle with increasing definiteness and determination." Most people recognize this general tendency and it may be said that the underlying principle of those who favor a Middle European Zollverein is the conscious desire of the members of such a "Verein" to constitute one of the "half dozen Powers." There are many Germans who say that this desire of Central Europeans will be realized without the division of sovereignty contemplated by a Zollverein. They reason as follows: Economic forces tend toward state and inter-state centralization. So far as Middle Europe is concerned Austria, Denmark and Holland with her colonies will gravitate toward Germany and will become in time a united empire.

There are others who say that the enormous industrial development in the United States and her reaching out toward foreign markets will weaken her policy of isolation, make her aims and commercial aspirations coincide with those of England and Germany and bring a definite "col-

onial open-door" policy. It is interesting to note, as bearing on this point, the present Anglo-Saxon "good-feeling" and more or less of an "approachment" between England and Germany. A discussion of these latter points, however, falls out of the scope of the present article.

GEORGE M. FISK,
2nd Sec., U. S. Embassy.

Berlin, December 29, 1898.

NOTE.—The foregoing paper, as the date shows, was written about three years since and was not primarily intended for publication. The diplomatic post held by the writer precluded a discussion, on his part, of the political and economic questions suggested by the subject in hand. He therefore purposely confined his efforts to an attempt to portray public opinion of Continental Europe on the question, as reflected in the writings and addresses of her economists, journalists and statesmen. Since the above date there have been discussions on the subject called forth from time to time by the political action of governments, or by important commercial and industrial changes which have been taking place in various countries, and especially in the United States. One of these outbursts occurred soon after the writing of the above report, being inaugurated by an important Dutch paper which advocated closer commercial relations between Holland and Germany. The whole discussion has been confined largely within the confines of Germany, Austria-Hungary and France—the countries primarily interested in the movement—but there are of late signs of life in this direction on the part of the Anglo-Saxon public, the most recent illustration being the advocacy by Mr. Carnegie, in his installation address at St. Andrew's University, of a United States of Europe.

The most satisfactory recent discussion of this question is an article by Professor Francke of Berlin (*Zollpolitische Einigungsbestrebungen in Mitteleuropa während des letzten Jahrzehnts*), which appeared in Volume XC of the

“Schriften des Vereins für Socialpolitik.” He reviews the entire subject in a most scholarly way but is careful to avoid definite conclusions as is evidenced by his concluding remarks: “Will it come in the near future to a union of the Middle European states whose natural leader is Germany? The question mark which we make here must be a very large one and we are frank to say we have neither yes nor no for an answer.”

We are told in a recent number of the *Nation* (July 4th, 1901) that “perhaps the most striking thing about the much-discussed plan for a European trade combination against America is the fact that nobody takes it seriously,” while former Assistant Secretary Vanderlip (*Forum* for February, 1902) makes the following statement: “The best judgment in Europe and America is, I believe, pretty well agreed on the futility of a European tariff alliance against the United States. Not one of our ambassadors or ministers believes it is a feasible programme for the European states, no matter how antagonistic European statesmen may become toward us on account of our commercial success in foreign fields. I found no important banker or manufacturer who thought it probable that the conflicting interests of the various states could be brought to any harmonious point of view from which to formulate such a tariff.”

Probably this is a fair statement of the present situation, and we may conclude that a Middle European Tariff-Union modelled after the German Zollverein or even the more moderate plan of general concerted action, such as that advocated by Professor von Waltershausen, is hardly a question of practical politics. However, when we review past history and consider present conditions, especially the gradual or rather rapid tendency toward not only industrial but also political consolidation, it is not difficult to feel that back of all this agitation there are forces at work which are stronger, perhaps, than we realize. Political institutions, now as in the past, have economic bases.

When industrial conditions change, political institutions must conform to these changes or go to the wall.

Four hundred years ago Middle Europe comprised many hundred petty sovereign or virtually sovereign units. Now the number does not exceed 35, even including the small German states, and all are dominated by one really great state—Prussia—which is powerful politically because she is powerful industrially. The small states of Europe survive to-day because of historic considerations which are gradually losing their force and not because there is any necessity for their existence as separate political units. It seems to the writer that the whole discussion has brought out two very prominent facts:

1. The large majority of writers cited above have admitted, either directly or inferentially, that a Middle European Tariff-Union of some sort was desirable because of similar economic conditions and wants.
2. On the other hand, the majority have likewise declared against such a Union because of opposing historical and racial passions and prejudices. This is a virtual admission that Union in some form or other must come because in the long run prejudices and passions must give way to economic and industrial forces. Just what form this Union or consolidation will take is purely problematical.

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November 3, 1902.

LITERATURE ON THE SUBJECT OF A MIDDLE EUROPEAN ZOLLVEREIN.¹

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¹ In the compilation of the list, the writer has made use of the bibliographical appendix of Prof. Francke's article (*Schriften des Vereins für Socialpolitik*, Vol. XC).

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31. "Die Vorbereitung neuer Handelsverträge" (June 13, 1898, magazine article by Richard Calwer).
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OF THE
JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

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